United States Court of Appeals

for the Second Circuit

APPENDIX

74-2053-4

United States Court of Appeals
FOR THE SECOND CIRCUIT

Nos. 74-2053
74-2054

GEORGE KATZ
Plaintiff-Appellee,
against
REALTY EQUITIES CORPORATION OF NEW YORK, *et al.*,
Defendants-Appellees,
against
KLEIN, HINDS & FINKE
and
ALEXANDER GRANT & COMPANY,
Defendants-Appellants.

KENNETH I. HERMAN, Trustee
F/B/O SHERIL ESTA KUPFER,
Plaintiff-Appellee,
against
REPUBLIC NATIONAL LIFE INSURANCE COMPANY, *et al.*,
Defendants-Appellees,
and
KLEIN, HINDS & FINKE
and
ALEXANDER GRANT & COMPANY,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Relevant Docket Entries—74 Civ. 1137
Consolidated with 74 Civ. 1115 for all pretrial purposes

Mar. 12/74	Filed complaint and issued summons.
Jun. 24/74	Filed order of consolidation-consolidating this action with 74 Civ. 1115 for all pretrial purposes only. Pollack, J. mn
Jul. 24/74	Filed defts. Alexander Grant & Co. and Klein, Hinds & Finke's notice of appeal from order of consolidation dated 6/24/74 mailed notices.
Oct. 25/74	Filed notice that the record on appeal in the above proceedings has been certified and transmitted to the U.S.C.A.
Oct. 29/74	Filed transcript of record of proceedings dated June 12-74.
Nov. 1/74	Filed suppl. notice that the record on appeal has been certified and transmitted to the U.S.C.A.
Nov. 1/74	Filed stipulation supplementing additional documents to be entered on the record of appeal.

Relevant Docket Entries—74 Civ. 1248
Consolidated with 74 Civ. 1115 for all pretrial purposes

Mar. 18/74	Filed complaint and issued summons.
Jun. 24/74	Filed order of consolidation—consolidating this action with 74 Civ. 1115 for all pretrial purposes only. Pollack, J. mn
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Katz Complaint

UNITED STATES DISTRICT COURT

For the Southern District of New York

74 Civ. 1137

GEORGE KATZ,

Plaintiff,

v.

REALTY EQUITIES CORPORATION OF NEW YORK, FIRST NATIONAL REALTY AND CONSTRUCTION CORPORATION, ROYAL NATIONAL BANK, REPUBLIC NATIONAL LIFE INSURANCE COMPANY, PEAT, MARWICK, MITCHELL & CO., WESTHEIMER, FINE, BERGER & CO., MORRIS KARP, JEROME SOCHER, THEODORE P. BEASLEY, C. J. SKELTON, RONALD REX BEASLEY, ROBERT P. BRADY, THOMAS G. NASH, JR., SAMUEL P. SMOOT, NEAL N. STANLEY, HILARY H. EVERS, PHELIM F. O'TOOLE, JR., ELIOT JANEWAY, EVERETT SMITH, HOBART TAYLOR, JR., DAVID STEIN, HOMER CHAPIN, HILARY EVERS, JR., SAM GITTLIN, LOUIS HUBSHMAN, JR., ARTHUR STANG, A. H. FRANKLIN, ROBERT HASLETT, J. P. LEUZZI, AMERICAN STOCK EXCHANGE, INC., KLEIN, HINDS & FINKE, AND ALEXANDER GRANT & CO.,

Defendants.

For his complaint, plaintiff alleges on information and belief; by IRA JAY SANDS as attorney:

1. This action is brought by plaintiff individually and on behalf of a class hereinafter described against defendants because defendants have engaged, are engaging and are about to continue acts, practices and one common and continuous long course of business which constitutes violations of the Securities Act of 1933 ("Securities Act") of

the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5, thereunder, the Martin Act of New York State and common law, which has caused damage to plaintiff and the class.

JURISDICTION AND VENUE

2. The Court has jurisdiction pursuant to Section 22 of the Securities Act, Section 27 of the Exchange Act and pendent jurisdiction.

3. Defendants are found in, and/or has transacted business in the Southern District of New York. Acts and transactions constituting the alleged course of business and the violations have occurred within this District and are connected to such violations.

PLAINTIFF

4. The plaintiff at various times purchased common stock of Realty Equities Corporation of New York ("Realty") during and since the violative acts herein and without knowledge of such acts being engaged in by defendants. Plaintiff has been damaged as a result.

CLASS ACTION ALLEGATIONS

5. (a) Plaintiff brings this action as a Class Action pursuant to the Federal Rules of Civil Procedure 23(b)(1) and 23(b)(3).

(b) Plaintiff undertakes to adequately protect the interests of the Class with the assistance of his attorneys.

(c) Plaintiff brings this action individually and representatively on behalf of a class of those who purchased common stock of Realty and/or First National Realty and Construction Corp. ("FNR"), between January 1,

1968 and March 9, 1974 in reliance upon the misrepresentations hereinafter set forth and without knowledge of the omissions hereinafter set forth and have suffered damages as a result of the long common continuous course of business of defendants, hereinafter described.

(d) Members of the Class are so numerous that joinder is impracticable, there being in excess of 100,000 persons throughout the United States.

(e) Plaintiff's claims are typical of claims of the Class. Plaintiff purchased his securities in a similar manner to other members of the Class. Plaintiff has no knowledge that any member of the Class has an interest in individually controlling prosecution of the action and plaintiff knows of no other litigation concerning the causes of action herein already commenced by members of the Class against defendants named herein. A Class Action is superior to other methods for efficient adjudication of the causes of action herein since it would be difficult of management to attempt to intervene all damaged persons or to commence individual actions. Plaintiff does not know of class difficulty likely to be encountered in management of this action.

(f) Common questions of law and fact predominate over questions affecting only individual members. The common questions of fact concern the misrepresentations and omissions hereinafter detailed, and whether same were material to members of the Class and the public at large. Common questions of law are concerned with whether such alleged acts were violative of statutes and Common Law and whether said acts damaged the members of the class.

DEFENDANTS

6. REPUBLIC NATIONAL LIFE INSURANCE COMPANY ("REPUBLIC") has its offices at 3988 North Central Expressway, Dallas, Texas. REPUBLIC is engaged in the life, accident, and health insurance business in 49 states, the District of Columbia and Puerto Rico. As of December 31, 1972, REPUBLIC had approximately 9,400,000 shares of common stock outstanding, traded over-the-counter. REPUBLIC files reports with the Securities and Exchange Commission ("SEC") pursuant to Section 15(d) of the Exchange Act. REPUBLIC as of December 31, 1972 had in excess of $10 billion of insurance in force and its investment portfolio exceeded $448 million.

7. REALTY EQUITIES CORPORATION OF NEW YORK ("REALTY") has its principal offices at 375 Park Avenue, New York. REALTY and its subsidiaries are primarily engaged in acquisition and resale of real estate and development and management of, and investments in, real estate. REALTY owns interests in apartment buildings, commercial properties, office buildings and shopping centers, hotels and land. Classes of REALTY's securities are registered with SEC pursuant to Section 12(g) of the Exchange Act. On August 3, 1970, trading in REALTY's securities was suspended by the American Stock Exchange ("Amex"), and on September 26, 1973, REALTY's securities, were delisted by Amex.

8. PEAT, MARWICK, MITCHELL & Co. ("PMM") is a public accounting firm with principal offices at 345 Park Avenue, New York, New York. PMM audited REPUBLIC's financial statements for REPUBLIC's fiscal years ended December 31, 1970, 1971 and 1972.

9. ALEXANDER GRANT & Co. ("Grant") is a public accounting firm with its offices in the Southern District of New York.

10. AMERICAN STOCK EXCHANGE, INC. ("Amex") is a registered securities exchange with its office and facilities located in the Southern District of New York.

11. KLEIN, HINDS & FINKE ("KHF") is a public accounting firm with its office in the Southern District of New York.

12. ROYAL NATIONAL BANK ("Royal") is a national banking institution with its office in the Southern District of New York.

13. ELIOT JANEWAY, EVERETT SMITH, HOLBART TAYLOR, JR., DAVID STEIN, HOMER CHAPIN, HILARY EVERS, JR., SAM GITTLIN, ARTHUR STANG, A. H. FRANKLIN, ROBERT HASLETT, J. P. LEUZZI, at all or during a portion of the relevant time herein, were directors of REALTY and actively involved in knowledge and activity relative to the violative conduct hereinafter alleged.

14. WESTHEIMER, FINE BERGER & Co. ("WESTHEIMER") is a public accounting firm with its offices at 1301 Avenue of the Americas, New York, New York. WESTHEIMER audited REALTY's financial statement for REALTY's fiscal years ended March 31, 1971, 1972 and 1973.

15. MORRIS KARP ("KARP"), resides at 63 Mamaroneck Road, Scarsdale, New York, is president, chief executive officer and a director of REALTY.

16. JEROME SOCHER ("SOCHER"), resides at 136 East 36th Street, New York, New York, is treasurer of REALTY and has been responsible for preparation of its quarterly and annual financial statements.

17. THEODORE P. BEASLEY ("T. BEASLEY"), resides at 4260 Bordeaux, Dallas, Texas, at all times relevant hereto, has been REPUBLIC's chief executive officer, Chairman of the Board, and member of its Executive Committee and Finance and Investment Committee.

18. CLARENCE J. SKELTON ("SKELTON"), resides at 7517 Spring Valley Road, Dallas, Texas, at all times relevant herein, was president and director of REPUBLIC and member of its Executive Committee and Finance and Investment Committee. SKELTON is now vice chairman of the board of REPUBLIC and chairman of REPUBLIC's Executive Committee.

19. RONALD REX BEASLEY ("R. BEASLEY"), resides at 3785 West Bay Circle, Dallas, Texas, at all times relevant hereto was executive vice president and a director of REPUBLIC, chairman of its Executive Committee and a member of its Finance and Investment Committee.

20. ROBERT P. BRADY ("BRADY"), resides at 7069 Irongate, Dallas, Texas, at all times relevant hereto, was executive vice president, chief actuary and director of REPUBLIC and member of its Executive Committee and Finance and Investment Committee.

21. THOMAS G. NASH, JR. ("NASH"), resides at 5545 Charlestown Drive, Dallas, Texas, at all times relevant herein, was general counsel of REPUBLIC, executive vice president in charge of Investment Division, director of its Executive Committee and Finance Committee. NASH is now president of REPUBLIC.

22. SAMUEL P. SMOOT ("SMOOT"), resides at 6806 Stephanie, Dallas, Texas, at all times relevant hereto, was

senior vice president, treasurer and director of REPUBLIC, and member of its Executive Committee and its Finance and Investment Committee.

23. NEIL N. STANLEY ("STANLEY"), resides at 3503 Hillbrook, Dallas, Texas, at all times relevant hereto was vice president and actuary of REPUBLIC and its chief financial officer with responsibility of preparing its financial statements.

24. HILARY H. EVERS ("EVERS"), resides at 2374 Grandin Road, Cincinnati, Ohio, is a mortgage and real estate broker. He served as director of REALTY from 1968 to 1969. In 1971 and 1972 he acted as a "finder" of appraisers and appraisals for REALTY.

25. PHELIM F. O'TOOLE, JR. ("O'TOOLE"), resides at 18 South Kings Highway, St. Louis, Missouri, is president of Phelim O'Toole Real Estate Company, St. Louis, Missouri, and is a real estate appraiser and a Member of the Appraisal Institute ("M.A.I.").

BACKGROUND INFORMATION

26. Between January 1968 and April 1970, REPUBLIC invested $17 million in REALTY and $4.6 million in REALTY's affiliate, First National Realty & Construction Corp. ("FNR"). During times relevant hereto, defendant KARP was president and principal executive officer of FNR. REPUBLIC's initial investment in REALTY and FNR, which in large part financed acquisition by REALTY of properties bearing REPURLIC mortgages, consisted of the following:

27. (A) On or about January 16, 1968, REPUBLIC purchased $6 million of 7½% notes of REALTY.

(B) On or about June 5, 1968, REPUBLIC purchased $1.5 million of 6% debentures of REALTY.

(C) On or about December 13, 1968, REPUBLIC purchased $2.6 million of 6% notes of FNR.

(D) On or about August 28, 1969, REPUBLIC purchased $2 million of 7¾% notes of FNR.

(E) On or about September 25, 1969, REPUBLIC for $2 million purchased 20,000 shares of REALTY senior preferred stock.

(F) On or about April 16, 1969, REPUBLIC purchased for $1.5 million, 15,000 shares of REALTY senior preferred stock.

(G) On or about April 29, 1970, REPUBLIC purchased $6 million of 7½% notes of REALTY.

28. Prior to 1970, REPUBLIC disposed of $3 million of the 7½% REALTY notes it acquired January 1968. At September 1970, REPUBLIC had net investment in REALTY and FNR of $18.6 million. Additionally, by September 1970, REPUBLIC was holding over $30 million in mortgages on properties owned or managed by REALTY or FNR which had been acquired as described in the paragraph below.

29. Concurrently and as a condition to purchase of securities of REALTY and FNR by REPUBLIC described above, both REALTY and FNR acquired real estate properties from third parties who owned the properties subject to large REPUBLIC mortgages. The properties included five hotels, office buildings, residential property, and vacant land. The properties had operated at cash flow deficits in that income was insufficient to pay expenses of operating and also to provide for debt service to REPUBLIC. REALTY could not have afforded to make the cash investment necessary to

purchase and operate the properties at a cash flow loss without the making of the above-described investments in REALTY by REPUBLIC.

30. In mid-1970, REALTY's financial condition worsened. In August 1970, Amex suspended trading in REALTY securities. REALTY's then independent public accountants, Alexander Grant & Co., disclaimed an opinion on REALTY's financial statements for the year ended March 31, 1970. On August 3, 1970, REALTY disclosed it expected to report a loss of $8.7 million for the year ended March 31, 1970. In September 1970, REALTY reported a loss of $13.2 million for the year ended March 31, 1970 and simultaneously restated earnings for its prior fiscal year ended March 31, 1969 downward from $1.52 per share to $0.02 per share. REALTY's accumulated deficit at March 31, 1970 was $16.6 million.

31. By September 1970, REALTY was in financial trouble, REPUBLIC's investment in REALTY was in jeopardy and REPUBLIC faced a write-down of a large portion of the REALTY paper it held.

COUNT I

Violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

32. All allegations above are hereby realleged and incorporated herein.

33. From in or about September 1970 to the present, defendants, directly and indirectly, singly and in concert and as part of one long course of conduct, and aiding and abetting each other, by use of means and instrumentalities

of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make statements made not misleading, and engaged in acts, practices and a course of business which operated as fraud and deceit upon persons in connection with purchase and sale of securities, including securities of REPUBLIC and REALTY and FNR, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5), as more fully described herein.

34. The aforesaid scheme, fraudulent acts and course of business consisted of T. BEASLEY, SKELTON, NASH, R. BEASLEY, BRADY, SMOOT and STANLEY, in concert with the others, having REPUBLIC, among other acts with the other defendants.

(A) invest further substantial sums in REALTY and FNR in an attempt to protect and conceal the fact of REPUBLIC's failing investment in REALTY and FNR;

(B) conceal from REPUBLIC's shareholders and the Insurance Department of the State of Texas such further investment by REPUBLIC in REALTY and FNR by converting such investment initially to companies serving as conduits for channeling REPUBLIC funds and subsequently by converting such investment into excessive mortgages on properties acquired by REALTY and FNR with funds from REPUBLIC;

(C) fraudulently report material amounts of income of REPUBLIC which was in fact generated by REPUBLIC's advancing substantial sums to REALTY and FNR which were immediately returned to REPUBLIC as interest payments on debt owed to REPUBLIC;

(D) overstate assets of REPUBLIC in reports furnished to shareholders of REPUBLIC and to the Insurance Department of the State of Texas.

35. In September 1970, REALTY's liquidity and cash flow problems had become acute, and REALTY was unable to meet its current obligations including obligations to REPUBLIC. REPUBLIC requested that Mercantile National Bank of Dallas, Texas ("Mercantile") make a loan to REALTY. On September 16, 1970, Mercantile loaned $12 million to REALTY at 10% interest. The loan was supported by an irrevocable take-out commitment by REPUBLIC to Mercantile. Under the terms of the commitment, REPUBLIC agreed to purchase on March 15, 1971 a 50% participation in the balance of the principal and interest then owing, and on September 15, 1972 to purchase the balance of the principal and interest. Mercantile is and has been REPUBLIC's principal bank. T. BEASLEY is a director of Mercantile and J. D. FRANCIS, Chairman of the Board of Mercantile, is a director of REPUBLIC.

36. Approximately half the proceeds of the $12 million Mercantile loan to REALTY were immediately disbursed to REPUBLIC, as follows:

(A) $4,626,562.50 to repurchase, at par plus accrued interest, $4.5 million face amount of 7½% notes of REALTY;

(B) $481,500 to repurchase from REPUBLIC that face amount of REALTY's 6% debentures; and

(C) REALTY loaned FNR $1 million with which FNR purchased from REPUBLIC $1 million face amount of 6% debentures of REALTY.

37. The infusion of new capital into REALTY and its affiliates by REPUBLIC through the Mercantile loan in September 1970 enabled REALTY to have funds to pay to REPUBLIC current and accrued interest on notes, mortgages and obliga-

tions. Further more, the infusion of funds enabled REALTY to repurchase at par plus accrued interest, the said REALTY notes and debentures. At the time, such notes and debentures were worth considerably less than par value.

38. By letter dated October 30, 1970, the Committee on Valuation of Securities of the National Association of Insurance Commissioners ("NAIC") advised REPUBLIC of the recommendation of its staff that debentures of REALTY be valued at zero for statement purposes at December 31, 1970.

39. On November 6, 1970, Arthur Andersen & Co. then REPUBLIC's auditors, sent a letter to REPUBLIC which stated, among other things:

> "Based upon information now available to us, we have concluded that qualification of our auditor's report relating to the 1970 financial statements of Republic National Life Insurance Company will be required. The extent of such qualification is not determinable at this time. . . ."

40. Said letter also cited the significance of REPUBLIC's involvement with REALTY, likelihood of its material effects on REPUBLIC's financial position at December 31, 1970 and results of REPUBLIC's operation for the year then ending, and set forth Andersen's belief that REPUBLIC's 1970 financial statements should include complete and informative disclosure of these matters and that examples of such disclosures include:

> "Segregation within the balance sheet of all investments in Realty and affiliates."

"Information regarding commitments to REALTY and affiliates together with appropriate description as to REALTY's current financial condition,

"Information relating to all significant transactions between REPUBLIC and REALTY or its affiliates. . . ."

41. In December 1970, REPUBLIC terminated Andersen's engagement as auditor. In February 1971, REPUBLIC's financial statements for calendar year 1970 were signed by defendant STANLEY, REPUBLIC's actuary, not then certified by independent public accountants. In February 1972, PMM issued unqualified opinions on REPUBLIC's 1970 and 1971 financial statements.

42. On or about December 11, 1970, REPUBLIC mailed a proxy statement to its shareholders, seeking authorization to issue 1,490,000 shares of REPUBLIC stock for all outstanding shares of Pacific National Life Assurance Co. and 140,000 shares of REPUBLIC stock for all outstanding shares of Eastern Empire Life Insurance Company. Such proxy statement included financial statements of REPUBLIC for nine months ended September 30, 1970.

43. On or about December 11, 1970, Pacific mailed a proxy statement for the proposed merger to Pacific's shareholders. Pacific's proxy statement included financial statements of REPUBLIC for the fiscal year ended December 31, 1969 which were supplied to Pacific by REPUBLIC.

44. The financial statements of REPUBLIC contained in the REPUBLIC proxy statement were false and misleading in that they contained no disclosure of REPUBLIC's large investment in REALTY as of September 30, 1970. Furthermore, such financial statements reported income for REPUBLIC's first three quarters of 1970 of $2.3 million. Of such income,

a material percentage arose from transactions between REPUBLIC and REALTY and should not have been recognized by REPUBLIC as income, with REALTY's problems.

45. The proxy materials are false and misleading in that the substance, nature, extent and materiality of REPUBLIC's involvement with REALTY is not disclosed, nor REALTY's problems.

46. The mergers of Pacific and Eastern into REPUBLIC were consummated, and the aforementioned false and misleading proxies were voted upon and executed by the respective shareholders, not knowing of REALTY's distress.

47. In December 1970, immediately prior to close of REPUBLIC's fiscal year, REPUBLIC and REALTY entered into a $25.7 million transaction which had the effect of restructuring REALTY's debt to REPUBLIC and paying off REALTY's loan from Mercantile, thereby removing REPUBLIC from its take-out commitment. REPUBLIC made loans totalling $23 million to four corporations which were either subsidiaries of REALTY or its affiliates or in nominee names, but then under control of REALTY, called Automated Realty Services, East Side Equities, Graycrat Corp. and Property Investment Company. The four corporations simultaneously paid for assets that were placed in them by REALTY at REALTY-fixed prices. REALTY received the $23 million for such assets. The assets included real property, notes, debentures, mortgages, leaseholds, and stock interests in other REALTY subsidiaries. In addition, REPUBLIC purchased from REALTY six mortgages for an aggregate of $3,235,000.

48. The money received by REALTY in the transaction were used as follows:

(A) $12,293,333 was used to pay off, with interest the Mercantile loan in which REPUBLIC had the take-out commitment.

(B) $4,590,937 went back to REPUBLIC to repurchase from REPUBLIC some of the 7½% REALTY notes at par plus accrued interest.

(C) $3,525,180 went to REPUBLIC to repurchase from REPUBLIC as par plus accrued interest the 35,000 shares of REALTY preferred stock which REPUBLIC had previously purchased from REALTY. The preferred stock was simultaneously "sold" to Automated Realty.

(D) In addition, REALTY made November and December mortgage payments to REPUBLIC on some mortgage obligations. The FNR note payments due in early 1971 were paid in advance, hotel mortgage payments then in arrears were paid, and future mortgage payments due REPUBLIC in amounts exceeding $400,000 were placed in escrow for payment to REPUBLIC.

49. The effect of the December 1970 transaction was that REPUBLIC removed the remaining unsecured REALTY securities, which it still held after the Mercantile loan transaction of September 1970, from its books at par without posting losses, was removed from its take-out commitment to Mercantile, and cured defaults to REPUBLIC mortgages which REALTY was unable to pay. At conclusion of the transaction, REPUBLIC held notes of four REALTY-controlled corporations whose only assets were acquired from REALTY at REALTY-set prices.

50. At close of 1970, REPUBLIC's aggregate investment in REALTY and its affiliates totaled in excess of $56 million, out of total reported REPUBLIC assets of $277 million.

51. From January 1, 1971 through September 30, 1971, REALTY's liquidity problems continued. REALTY closed its fiscal year on March 31, 1971 with a loss as reflected on its annual report of $13.6 million. For REALTY and its affiliates to remain reasonably current during this period on its obligations, it was necessary for REPUBLIC to infuse new cash to REALTY through more transactions in which REALTY would end up with cash to give back to REPUBLIC, thus hiding REALTY s problems.

(A) New mortgages were placed by REPUBLIC directly on real properties owned by REALTY and its affiliates which totaled in excess of $2.2 million.

(B) Five mortgages owned by REALTY were transferred to REPUBLIC for $920,000.

(C) REALTY placed some assets, mainly leasehold interests in Washington, D.C. area residential properties into a shell corporation, Q. D. Realty, and obtained a non-recourse loan from REPUBLIC for Q. D. Realty of $4 million. REALTY received the $4 million from Q. D. Realty in exchange for its equity interest in the assets. After completion of the transaction in May 1971, the stock of Q. D. Realty was transferred to a third party for no consideration.

(D) REALTY sold leasehold interests to Investors Funding Corporation of New York ("Investors") for $2 million. REALTY gave Investors an option to pay $2 million in cash or give to REALTY $3 million in face amount of long-term debentures of Investors

with a less-than-current market interest rate. Investors elected to pay REALTY in its debentures. REALTY arranged to transfer the debentures to REPUBLIC for $3 million.

(E) The cash received by REALTY in parts (A), (B), (C) and (D) above was in large part directly returned to REPUBLIC to pay accrued and past due interest and to restructure existing debt. In the largest of these transactions, the $4 million received from REPUBLIC by REALTY in the Q. D. Realty transaction, $2,663,000 went to REPUBLIC to pay accrued interest and reduce principal of a loan made to Graycrat Corporation, by REPUBLIC in December 1970 in the transaction described above.

52. In October 1971, REPUBLIC loaned Product Enterprises Corp., a REALTY affiliate, $6 million secured by Product Enterprise nonrecourse debentures. The $6 million went to REALTY for assets which were mainly various interests in real properties. REALTY set the prices. REALTY simultaneously used $4 million to repurchase from REPUBLIC, notes at par value plus accrued interest, of Property Investment Company as above described.

53. In October 1971, REPUBLIC advanced $8 million to a shell corporation called Unity Industries by purchasing Unity's debenture. The cash was transferred to REALTY for REALTY assets which were placed in Unity Industries at REALTY-set prices. One asset placed in Unity was the fee interest in a ranch in Idaho upon which REPUBLIC has previously placed a $1.2 million mortgage. The same property had been sold just prior to REPUBLIC's placing the $1.2 million mortgage for $470,000. Q. D. Realty which had been

loaned $4 million by REPUBLIC in May 1971, was merged into Unity. Unity's aggregate debt to REPUBLIC was over $13 million, and based upon operating history of the assets which were placed into Unity, it had no prospect for meeting its obligations. The Unity stock was transferred to third parties for no consideration. The cash received by REALTY in this transaction in large part went back to REPUBLIC to pay off REALTY debt.

54. In October 1971, REPUBLIC decided to rid itself of notes and debentures it held on various REALTY-related entities which had borrowed REPUBLIC money to purchase REALTY assets.

55. REPUBLIC advised REALTY that it would accept real property supported by appraisals in satisfaction of debt. REPUBLIC agreed it would place large mortgages on raw land to be acquired by REALTY subsidiaries or nominees on a non-recourse basis to REALTY, in exchange for notes and debentures it held on its books.

56. REALTY did not own large tracts of land and went into the market and arranged to buy a number of tracts through nominee subsidiaries. Since REALTY had no cash to purchase the tracts, it was necessary for REPUBLIC to place the mortgages on the land simultaneously with the closing of the purchase of the land by REALTY from third parties so that REALTY could use part of the proceeds of the mortgages to pay for the land.

57. In the first of the mortgage-swap transactions, on November 30, 1971, R. E. Duchess Corp., a REALTY subsidiary, purchased 1,040 acre tract in Loudoun County, Virginia, for $2,700,000. Simultaneously, R. E. Duchess borrowed $6,500,000 from REPUBLIC secured by the land and prepaid

$500,000 in interest to REPUBLIC. REPUBLIC gave REALTY its check for $6.5 million. REALTY used $2,700,000 to pay for the land and $2 million went back to REPUBLIC for "purchase" of debentures of Unity Industries. REALTY retained approximately $1,200,000 for corporate purposes.

58. On December 22, 1971, nine days before the close of REPUBLIC's fiscal year, REALTY and REPUBLIC closed a transaction involving in excess of $31 million, the net result of which was the removal of debentures of Unity, Q. D. Realty, Automated and Product from REPUBLIC's books. The major component of the transaction was swap of debentures for mortgages as in the Loudoun transaction above. It also involved cancellation of pre-existing REALTY debt. The components of the transaction which occurred on December 22, 1971, are as follows:

(A) A REALTY subsidiary, Wambat, purchased a 21,000 acre tract in the Adirondacks region of New York State for $3,150,000. REPUBLIC simultaneously placed a $13,450,000 mortgage on the property, and REPUBLIC money was used by REALTY to pay for the land.

(B) REPUBLIC placed a mortgage for $1.4 million on a 123 acre tract in West Palm Beach, Florida, in favor of a REALTY nominee subsidiary, Wambach Realty Corp. REALTY contracted to purchase the land for $622,000 and closed the purchase on the same date as the mortgage, using REPUBLIC money to pay.

(C) REPUBLIC made a loan of $4,100,000 to a REALTY subsidiary, Medical Arts Sanitarium, Inc., which was operating a hospital in New York.

(D) REALTY contracted for purchase of a 1395 acre tract in Lake Havasu, Arizona, for $2.4 million. On December 22, 1971, REALTY sold it to REPUBLIC for $5.2 million using REPUBLIC money from the proceeds.

(E) REALTY sold to REPUBLIC a 206 acre tract in Harriman, New York, for $4.4 million. At the same time, it closed on its contract to purchase the land for the sum of $1,562,000. REALTY used REPUBLIC money to purchase the land.

(F) REALTY purchased an A&P Supermarket in Yonkers, New York, for $365,000 and simultaneously resold it to REPUBLIC for $550,000.

59. In the December 22, 1971 transaction, REALTY received an aggregate of $31,103,000 from REPUBLIC, of which $8 million was used to purchase the land described above. REALTY retained $2.6 million. The remainder came to REPUBLIC for interest payments on other outstanding mortgages. $20,293,000 went back to REPUBLIC, as follows:

(A) For purchase of $6,800,000 in face amount of 8% debentures of Unity Industries, Inc.

(B) For purchase of $6,000,000 in face amount of 8% debentures of Product Enterprises Corp.

(C) For purchase of $4,000,000 Promissory Note of Q. D. Realty, Inc.

(D) For purchase of $3,000,000 in face amount of debentures of Automated Realty Services, Inc.

(E) To cover accrued interest on the above.

Katz Complaint

60. At year-end 1971, REPUBLIC's investment in REALTY and REALTY-related entities aggregated in excess of $86 million, out of total reported assets of $412 million.

61. The two largest mortgages on REPUBLIC's books in 1972 were the Loudoun and the Adirondacks mortgages. At least by the latter part of 1972, REPUBLIC realized that the REALTY nominee corporations which owned the fee interest in the two mortgages would not be making the large payments soon becoming due. REALTY and REPUBLIC agreed upon a plan by which the mortgages could be kept current.

62. In October, 1972, REPUBLIC came to REALTY for help. REALTY owned the fee interest of an industrial complex in Enfield, Connecticut, known as the Bigelow-Sanford Complex. The principal tenant in the complex was the Bigelow-Sanford Carpet Company. The carpet company had been phasing out its operations for several years and had given REALTY notice that it did not intend to renew its lease which would expire on July 1973. There were no other major tenants of the complex and prospects for finding a tenant for the antiquated industrial site were dim. Several years earlier, REALTY had offered REPUBLIC an interest in the Bigelow-Sanford Complex, but after inspecting the property REPUBLIC had refused to make any investment therein. In October 1972, however, REPUBLIC and REALTY devised a scheme whereby the mortgage payments on the Adirondacks and Loudoun tracts could be paid. The mechanics of the "Enfield" transaction were as follows:

63. REALTY created a lease of the Bigelow-Sanford tract to Enfield Properties Corp., a REALTY subsidiary, providing for annual lease payment, to REALTY, of $100,000 per year. With the lease as security, REPUBLIC granted a $5 million leasehold mortgage to Enfield. As the carpet company's

lease was soon to expire and there were no other tenants for the vast tract in sight. Enfield Properties Corp. had little prospect of being able to make the annual payment to REALTY of its mortgage payment to REPUBLIC. As part of the transaction, Enfield Properties Corp. acquired for $15,000 the two shell corporations that held title to the Adirondacks property encumbered by a $13.5 million REPUBLIC mortgage and the Loudoun, Virginia, tract encumbered by a $6.5 million REPUBLIC mortgage. Of the $5 million REPUBLIC paid to Enfield for the leasehold mortgage, $1.7 million went back to REPUBLIC to pay the REPUBLIC mortgages on the two tracts soon becoming due. REPUBLIC thus paid its mortgages with its own money. REPUBLIC treated the greatest part of the $1.7 million as income on REPUBLIC's income statement. Enfield transferred the remaining $3.3 million to REALTY and REALTY sold some debentures and other assets of dubious value to Enfield for a part of the $3.3 million. REALTY also satisfied the second and third mortgages on their fee interest which totaled $3,650,000 for a fraction of their face amount. REALTY ended up with in excess of $2 million in cash. After the above transactions had been concluded, Louis Hubshman, Jr. ("Hubshman"), former vice president of REALTY, acquired Enfield for no consideration, knowing that he was aiding the scheme.

64. On June 30, 1972, REALTY purchased a shopping center in Levittown, Pennsylvania, for $2.3 million and simultaneously obtained a mortgage from REPUBLIC for $4 million, using proceeds of the mortgage to pay for the property. Of the remainder, $1,150,000 was returned to REPUBLIC as prepayment on various hotel mortgages.

65. On October 6, 1972, REPUBLIC acquired from REALTY in satisfaction of $1,500,000 in REALTY-related indebtedness,

two notes of Great Plains Hotel Co., Inc. The Great Plains notes aggregate $3,650,000 in face amount, bear no interest and do not provide for payment of principal until December 31, 1987, at which time payments of annual installments of $150,000 are scheduled to begin.

66. On October 20, 1972, REPUBLIC paid $1,200,000 to a REALTY affiliate, FNR, to purchase a corporate note of Educational Development & Research Corporation. Proceeds from this transaction were returned to REPUBLIC to pay REALTY-related debt.

67. On October 5, 1972, REPUBLIC granted REALTY a $3 million mortgage on a leasehold interest in a shopping center which was purchased contemporaneously by REALTY. Of the $3 million received by REALTY, $1 million was used to acquire REALTY's interest in the shopping center and $3 million returned to REPUBLIC to acquire, at par plus accrued interest, notes and mortgages previously transferred to REPUBLIC by REALTY. The notes and mortgages were secured by decaying properties in Newark, Paterson and Hoboken, New Jersey, and Albany, New York. Most were in default.

68. At year-end 1972, REPUBLIC's investment in REALTY and related entities aggregated at least $108 million, out of total reported assets of $448 million.

69. While REPUBLIC was continuously making new loans to REALTY and its related parties from January 1, 1968 through the present, REALTY and its affiliated companies and persons were obligated to pay to REPUBLIC interest on the loans and mortgages already on REPUBLIC's books. REPUBLIC accrues such interest due and payable as income in the period of accrual.

Katz Complaint

70. In REPUBLIC's fiscal years 1970, 1971 and 1972, a material portion of REPUBLIC's reported income was derived from accrued interest on REALTY-related debt. The amounts of such pre-tax income arising from REALTY transactions is at least as follows (reported net income of REPUBLIC in parentheses):

Year ended December 31,

1970	$2 million	($ 4,083,274)
1971	$3 million	($ 8,617,305)
1972	$3.5 million	($10,381,515)

71. While REPUBLIC was reporting interest accrued and received on REALTY-related debt as income in its annual reports to its shareholders, to the SEC and the public, it was continuously making new loans and expanding its debt base with REALTY and REALTY-related entities. Of such reported income, a material percentage was attributable to cash received by REPUBLIC from REALTY. The source of this cash was loans made to REALTY by REPUBLIC when financing was not otherwise available to REALTY. The ultimate collectibility of these loans was in doubt. REPUBLIC should not have recognized income therefrom, knowing of REALTY's condition.

72. REPUBLIC, in its fiscal years ended December 31, 1970, 1971 and 1972 invested a substantial portion of its assets in REALTY, its affiliates, nominees and related entities or in properties which had been obtained from REALTY and its related companies in satisfaction of debt. REPUBLIC failed to disclose that a large portion of its assets had been invested in REALTY, then in grave financial difficulty and aided REALTY and other defendants in misrepresenting the true nature of REALTY's condition.

73. REPUBLIC thus overstated its assets in its financial reports filed with the SEC and others in order to hide the REALTY financial problems and as part of the scheme to withhold disclosure of the substance, nature, extent and materiality of REPUBLIC's transactions with REALTY, and to buoy up REALTY's image.

74. T. BEASLEY, NASH, R. BEASLEY, BRADY, SKELTON, SMOOT and STANLEY participated in the aforesaid scheme and fraudulent course of conduct in execution of their respective offices at REPUBLIC. NASH negotiated terms of all REPUBLIC-REALTY transactions from February 1, 1972 until the present. T. BEASLEY, as chief executive officer of REPUBLIC, is responsible and exercised supervisory and review function for conduct of all REPUBLIC's affairs including REPUBLIC's investments in REALTY. T. BEASLEY participated in negotiation of significant transactions aforesaid. R. BEASLEY, BRADY, SKELTON, and SMOOT, in addition to their other offices, were members of REPUBLIC's Finance and Investment Committee, which approved virtually every transaction between REPUBLIC and REALTY, and all said defendants were members of that Committee. R. BEASLEY, BRADY, SKELTON, SMOOT, NASH and T. BEASLEY, at all relevant times served on REPUBLIC's Board of Directors and were charged with ultimate responsibility for REPUBLIC affairs including its investments and its non-involvement in the fraudulent scheme herein described.

75. From in or about January 1, 1970 to the present, PMM and REPUBLIC and the individual defendants connected with REPUBLIC directly and indirectly, singly and in concert and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made

untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of REALTY and FNR, in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

76. As a part of the aforesaid scheme, PMM issued its audit report, including its unqualified opinion on the financial statements of REPUBLIC for the years 1970, 1971 and 1972 when such financial statements were materially false and misleading in the manner and in the respects more fully set forth herein.

77. Prior to issuing its auditor's report for REPUBLIC's fiscal years 1970 and 1971, PMM had received and reviewed Arthur Andersen & Co.'s November 6, 1970 letter to REPUBLIC, the outlines of which are alleged above.

COUNT II

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

The preceding paragraphs are realleged and incorporated herein.

78. From in or about March 1, 1969 to the present, REALTY, FNR, KARP and SOCHER, directly and indirectly, singly and in concert and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the state-

ments made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities, including those of REALTY and REPUBLIC, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

79. KARP and SOCHER caused REALTY and FNR to:

(A) Engage in and report transactions in REALTY's and FNR's 1971, 1972 and 1973 financial statements, as bona fide, arm's-length business transactions when in fact such transactions were not as reported and were part of a fraudulent scheme and long course of conduct which had as its purpose creation and maintenance of appearance to the investing public, shareholders, SEC and AMEX that REALTY and FNR were and are viable business entities when in fact they was [sic] not and were close to ceasing to exist as on-going entities and;

(B) Falsely and fraudulently report as income proceeds of REPUBLIC mortgages when in fact such proceeds were immediately channeled back to REPUBLIC.

80. In March 1972, immediately prior to the close of REALTY's fiscal year, REALTY transferred the subsidiaries holding title to the Adirondacks and Loudoun land shell nominees for nominal consideration. REALTY falsely declared as income for its fiscal year ended March 31, 1972, the excess of REPUBLIC mortgages ($20 million) over purchase prices ($6 million). REALTY never realized any of the $14 million it reported as income since the $14 million went

immediately back to REPUBLIC as a part of the fraudulent scheme for debentures of REALTY-related entities taken back by REALTY at par value. At the time, such debentures were worth a small fraction of face value.

81. On or about February 11, 1971, REALTY created a corporate entity called S. D. Associates, Inc. ("S. D."). On February 12, 1971, REALTY transferred assets into S. D., namely several mortgage notes on apartment properties and an operating lease on an apartment building in New Jersey managed by REALTY. These assets were carried on REALTY's books as approximately $100,000. S. D. issued to REALTY a $4,000,000 note at a 5% interest rate, with interest and principal payable in a single payment in 1976. The note was signed at KARP's request by the owner of a small men's haberdashery store, who signed the note in his capacity as president of S. D. The note was a corporate note without recourse to the party who signed on behalf of S. D.

82. On February 12, 1971, REALTY sold to S. D. an option to acquire, for $1 million, all assets of Realty Equities Suffolk Downs, Inc. which owned a racetrack. S. D. on the same date transferred its option to National Raceways, Inc., which then exercised the option by paying REALTY $1 million. The document transferring to National S. D.'s option on the racetrack assets was signed by the same individual who signed the $4 million note of S. D.

83. In August 1971, REALTY, its subsidiaries and affiliates were indebted to Royal National Bank of New York ("Royal") for $8,350,139. Royal was over its legal lending limit with respect to its REALTY-related debt. To create the appearance of elimination of such debt, REALTY and Royal arranged the following transactions on August 5, 1971:

(A) REPUBLIC loaned REALTY $3 million which REALTY paid to Royal;

(B) Royal purchased from REALTY for $2 million a mortgage on premises known as the Queen Charlotte Hotel in Charlotte, North Carolina. REPUBLIC delivered a letter agreement to Royal pursuant to which REPUBLIC agreed to purchase such mortgage on or before August 1, 1972 at par plus accrued interest; and

(C) Simultaneously, Royal loaned $3,350,139 to S. D., which transferred said sum to REALTY, purportedly as partial prepayment of the $4 million note of S. D. described above. This obligation to Royal remains unpaid and outstanding.

84. An S. D. note to Royal for $3,350,139 and other related documents were signed by a REALTY nominee who was represented as vice president of S. D. In fact, however, the nominee was employed by REALTY as a building superintendent in a New Jersey apartment building managed by REALTY. He had no interest in S. D. and participated in none of its affairs except for the signing of various S. D. documents which he signed only as directed to do so by a REALTY officer.

85. REALTY has controlled S. D. from inception. REALTY has accounted for transactions with S. D. by reporting income statement and balance sheet items for its 1971, 1972 and 1973 fiscal years in the same manner as if REALTY had negotiated such transactions with an independent party.

86. Accordingly, in view of the sham nature of the REALTY-S.D. transactions, material adjustments were

necessary to REALTY's financial statements for its 1971, 1972 and 1973 fiscal years and the REALTY financial statements for its fiscal years ended March 31, 1971, 1972 and 1973, sent to REALTY's securities holders, filed with the SEC and AMEX, are materially false and misleading.

COUNT III

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

The preceding paragraphs are realleged herein.

87. From in or about January 1, 1970 to the present, REALTY and WESTHEIMER, FINE, BERGER & Co. ("WESTHEIMER"), directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities, including those of REALTY, in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

88. WESTHEIMER audited financial statements of REALTY for REALTY's fiscal years ended March 31, 1971, 1972 and 1973. WESTHEIMER issued qualified opinions on such financial statements for the 1971 and 1972 fiscal years and disclaimed an opinion for the 1973 fiscal year.

89. WESTHEIMER was the third independent auditor to begin an audit of REALTY's financial statements for its 1971

and 1972 fiscal years. WESTHEIMER was put on notice by consultation with WESTHEIMER's immediate predecessor, David Berdon & Co. ("Berdon") that Berdon's difficulty in completing its audit of REALTY's financial statements was its inability to satisfy itself by ordinary auditing procedures as to the nature and character of a number of REALTY-REPUBLIC transactions. WESTHEIMER was aware that Berdon's engagement was terminated by REALTY after Berdon stated it would have to examine the books and records of REPUBLIC as an extended auditing procedure prior to issuance of its auditor's report.

90. WESTHEIMER permitted its audit reports, including its qualified opinion, to accompany REALTY's financial statements for the fiscal years ended March 31, 1971 and 1972 when the financial statements were materially false and misleading in that they reported the transactions detailed herein including but not limited to the Loudoun, Adirondacks and S. D. transactions, as bona fide arm's-length business transactions, when in fact such transactions were not as reported and were part of a fraudulent scheme and long course of conduct. Such financial statements also falsely and fraudulently reported as income the proceeds of the REPUBLIC mortgages in the Loudoun and Adirondacks transactions.

COUNT IV

[Section 13(a) of the Exchange Act and Rule 13a-1 thereunder]

91. The preceding paragraphs are realleged and incorporated herein.

92. REALTY's financial reports for its fiscal years ended March 31, 1971, 1972 and 1973 contain, among other things,

reports of earnings which are false and misleading and also report transactions as bona fide arm's-length transactions which were sham transactions which took place between REALTY and its affiliates, nominees and other related entities.

93. Reports, including said misleading statements which have been filed with the SEC are REALTY's annual reports on Form 10-K for its fiscal years ended March 31, 1971, 1972 and 1973.

94. By reason of the foregoing, defendants REALTY, WESTHEIMER, KARP and SOCHER have violated and aided and abetted violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

COUNT V

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

95. The preceding paragraphs are realleged and incorporated herein.

96. From on or about December 1, 1971 to the present date, REALTY, EVERS, O'TOOLE and KARP directly and indirectly, singly and in concert and aiding and abetting each other and other defendants, by use and means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon persons in connection with the purchase and sale of securities of REALTY and REPUBLIC, all in violation of Section 10(b) of

the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

97. As a condition to entering into the Loudoun transaction and other transactions described which closed on December 22, 1971, REPUBLIC requested that REALTY supply it with appraisals of the respective properties reflecting values to justify the amount of purchase price or amount of the mortgages. REPUBLIC required that the appraisals be done by an appraiser who is a Member of the Appraisal Institute ("M.A.I.").

98. On December 14, 1971, KARP contracted with EVERS, a former director of REALTY who is not himself an appraiser, that for a total of $35,000 plus expenses, EVERS would supply appraisals for properties in the Adirondacks; Lake Havasu, Arizona; West Palm Beach, Florida; Harriman, New York; and an A&P store in Yonkers, New York.

99. EVERS hired O'TOOLE to do the appraisals, paying O'TOOLE $12,500 of the $35,000 he received.

100. On December 17, 1971, REPUBLIC's Finance and Investment Committee approved the granting of mortgages or the purchase of properties involved in the transactions which closed on December 22, 1971. The appraisal reports submitted to REALTY by O'TOOLE and EVERS reflect the following values for the subject properties. The contemporaneous REALTY purchase price is in parentheses:

Lake Havasu	$ 5.2 million	($2.4 million)
Harriman	$ 4.4 million	($1.6 million)
Adirondacks	$18 million	($3.1 million)
West Palm Beach	$ 2 million	($0.6 million)

101. O'TOOLE, accompanied by EVERS, did not visit the sites of the subject properties until after the REPUBLIC

Finance and Investment Committee approved the transactions on December 17, 1971. The appraisals written by O'Toole were delivered by Realty to Republic January 4, 1972.

102. The appraisals were backdated to December 13, 1971, prior to the meeting of Republic's Finance and Investment Committee on December 17, 1971. The appraisals were fraudulent and inflated and ignored contemporaneous purchase prices of properties involved, as well as sales prices of comparable properties.

COUNT VI

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

103. The preceding paragraphs are realleged herein.

From in or about July 1, 1970 to the present, Realty and Karp, directly and indirectly, singly and in concert and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

104. On August 1, 1970, a dividend of 6¼ cents per share was payable on Realty's common shares. On July 31, 1970 Karp ordered $200,000 of funds of Avionics Invest-

ing Corporation, a small business investment company wholly-owned by REALTY, transferred from Avionics' bank account in New Jersey to REALTY's account at Bankers Trust Company in New York City.

105. The funds transferred were used to pay a dividend to REALTY's common shareholders on August 1, 1970, at the rate of 6¼ cents per share and aggregated $196,152.90.

106. REALTY had not disclosed it was able to pay its dividend on August 1, 1970 only through such means of illegally diverting funds. By so declaring and paying such dividend, REALTY perpetrated the false illusion that it was in relatively sound financial condition, when in fact it was in dire material financial straits.

107. On September 30, 1970, REALTY repaid $200,000 to Avionics, with cash proceeds from the $12 million Mercantile loan to REALTY arranged by REPUBLIC.

108. On June 15, 1972, the United States District Court for the District of Columbia, in a case captioned *SEC* v. *Realty Equities Corporation of New York*, C.A. No. 2544-71, entered an Order of Final Judgment of Permanent Injunction as follows:

> "1. That defendant shall file with the plaintiff Securities and Exchange Commission, and duplicate originals with the American Stock Exchange, an annual report on Form 10-K for its fiscal year ended March 31, 1972, by July 20, 1972; and
>
> "2. That defendant be and hereby is permanently enjoined and restrained from failing subsequent to July 20, 1972, to file with the plaintiff Securities and Exchange Commission, and duplicate originals with the American Stock Exchange, timely and accurate

periodic reports on Forms 10-K, 9-K and 10-Q, or any other forms, in contravention of Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a), and the rules and regulations thereunder."

109. Grant and KHF were the independent auditors for REALTY during certain relevant portions of the periods above described. Each discovered and knew of certain and many of the material problems between REALTY and REPUBLIC, all as hereinabove described. Grant and KHF informed REALTY of the fact that the financial statements of REALTY and of FNR would not be unqualified and both firms were replaced as auditors for REALTY. Yet both firms failed of their obligations to the public and to the SEC and Amex to fully disclose such facts and to alert the responsible authorities thereto. Instead each firm withheld the facts thereof in order to benefit themselves by not involving themselves therein, directly or indirectly, and to prevent damage to themselves and to other defendants, despite the further damage resulting to plaintiff and the class.

110. The securities of REALTY were listed and traded on Amex until in or about September 26, 1973. Plaintiff and the class purchased REALTY securities in large portion because of the flexibility, liquidity, reliability, full disclosure and responsibility of securities listed and traded on Amex as propounded to the public. After taking no action for a considerable period of time, Amex conducted an extensive investigation of REALTY and ascertained and came into possession of many or all of the facts herein alleged. Despite the aforesaid, Amex merely delisted REALTY securities and withheld and omitted to disclose to plaintiff and the class the facts which Amex had ascertained despite its duty to oversee such full disclosure, thus causing further damage to plaintiff and the class.

111. This action is also brought to restrain defendants from continuing such acts, practices and courses of business. Defendants will, unless restrained and enjoined, continue to engage in acts, practices and courses of business of the nature and type alleged herein.

112. As a result of each of the wanton and deliberate acts above, performed in total disregard of rights of the public at large, plaintiff and the class were damaged.

WHEREFORE, plaintiff demands judgment that:

(A) The rights of the named plaintiff and the class against the defendants be determined and this action be determined as a class action as above defined;

(B) Plaintiff and the class be awarded damages against defendants as determined and expenses, costs and disbursements incident to prosecution of this action, including reasonable accounting and counsel fees;

(C) Punitive and exemplary damages be assessed against defendants;

(D) This Court issue a preliminary and final judgment restraining and enjoining defendants, and those in concert or participation with them, from, directly or indirectly, in connection with the offer, purchase or sale of securities heretofore or hereafter issued by REALTY and FNR, using means and instrumentalities of interstate commerce or mails to make false and misleading statements or omit to state material facts necessary in order to make statements made, not misleading, and/or employ devices, schemes or artifacts to defraud, concerning but not limited to matters

described herein, and to engage in any act, practice or course of business which operates or would operate as fraud or deceit upon any person, pertaining to matters in this complaint.

(E) An order issue appointing a receiver to take control of the books, records, assets and business of REALTY and FNR and to conduct their affairs until further order of this Court and empowering and directing such receiver to, among other things, conduct a full investigation and arrange to oversee an accounting into the financial and other affairs of REALTY and FNR and take appropriate action based thereon.

(F) Such other relief as the Court deems proper.

IRA JAY SANDS

By /s/ IRA SANDS

Attorney for Plaintiff
Office and Post Office Address
701 Seventh Avenue
New York, New York 10036
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Herman Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1248

KENNETH I. HERMAN, Trustee F/B/O
SHERIL ESTA KUPFER,

Plaintiff,

—against—

REPUBLIC NATIONAL LIFE INSURANCE COMPANY, REALTY EQUITIES CORPORATION, RONALD REX BEASLEY, THEODORE P. BEASLEY, ROBERT P. BRADY, J. V. FRANCIS J. WILLARD GRAGG, THOMAS G. NASH, JR., W. L. PICKENS, C. J. SKELTON, SAMUEL P. SMOOT, W. N. STANNUS, JOEL T. WILLIAMS, JR., SAM G. WINSTEAD, MORRIS KARP, HILARY H. EVERS, PHELIM F. O'TOOLE, JR., NEIL N. STANLEY, JEROME SOCHER, PEAT MARWICK, MITCHELL & CO., ELIOT JANEWAY, EVERETT T. SMITH, HOLBART TAYLOR, JR., DAVID STEIN, HOMER CHAPIN, HILARY EVERS, JR., SAM GITTLIN, "JOHN" HUBSHMAN, JR., ARTHUR STANG, A. H. FRANKLIN, ROBERT HASLETT, J. P. LEUZZI, AMERICAN STOCK EXCHANGE, INC., KLEIN, HILDS & FINKE, ALEXANDER GRANT & CO., STANDARD & POOR'S CORP., A. M. BEST COMPANY, WESTHEIMER, FEIN, BERGER & CO., ROYAL NATIONAL BANK, and FIRST NATIONAL REALTY & CONSTRUCTION CORP.,

Defendants.

For their complaint, plaintiffs allege on information and belief, by Harry H. Lipsig, as attorney:

1. This action is brought by plaintiffs individually and on behalf of a class hereinafter described against defendants

because defendants have engaged, are engaging and are about to continue acts, practices and one common and continuous long course of business which constitutes violations of the Securities Act of 1933 ("Securities Act") of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5, thereunder, the Martin Act of New York State and common law, which has caused damage to plaintiffs and the class.

JURISDICTION AND VENUE

2. The Court has jurisdiction pursuant to Section 22 of the Securities Act, Section 27 of the Exchange Act and pendent jurisdiction.

3. Defendants are found in, and/or have transacted business in the Southern District of New York. Acts and transactions constituting the alleged course of business and the violations have occurred within this District and are connected to such violations.

PLAINTIFF

4. The plaintiffs at various times purchased common stock of Republic National Life Insurance Company ("Republic") during and since the violative acts herein and without knowledge of such acts being engaged in by defendants. Plaintiffs have been damaged as a result.

CLASS ACTION ALLEGATIONS

5. (a) Plaintiffs bring this action as a Class Action pursuant to the Federal Rules of Civil Procedure 23(b)(1) and 23(b)(3).

(b) Plaintiffs undertake to adequately protect the interests of the Class with the assistance of their attorneys.

(c) Plaintiffs bring this action individually and representatively on behalf of a class of those who purchased common stock of Republic National Life Insurance Company between January 1, 1968 and March 9, 1974 in reliance upon the misrepresentations hereinafter set forth and without knowledge of the omissions hereinafter set forth and have suffered damages as a result of the long common continuous course of business of defendants, hereinafter described.

(d) The members of the class are scattered throughout the United States and are so numerous as to make it impractical to bring them all before the Court.

(e) The claims of the class involve common questions of both law and fact. Questions of fact include whether the defendants participated in a scheme to falsify the financial statements of Republic so that Republic might avert a write-down of its substantial investment in Realty Equities Corporation of New York ("Realty"). The questions of law common to the class are whether the acts alleged herein constitute violations of the Exchange Act of 1934.

(f) The questions of law and fact common to the members of the class predominate, over any questions affecting individual members.

(g) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANTS

6. Republic National Life Insurance Company ("Republic") has its offices at 3988 North Central Expressway, Dallas, Texas. Republic is engaged in the life, accident and health insurance business in 49 states, the District of Columbia and Puerto Rico. As of December 31, 1972,

Republic had approximately 9,400,000 shares of common stock outstanding, traded over-the-counter. Republic files reports with the Securities Exchange Commission ("SEC") pursuant to Section 15(d) of the Exchange Act. Republic as of December 31, 1972 had in excess of $10 billion of insurance in force, and its investment portfolio exceeded $448 million.

7. Realty Equities Corporation of New York ("Realty") has its principal offices at 375 Park Avenue, New York. Realty and its subsidiaries are primarily engaged in acquisition and resale of real estate and development and management of, and investments in, real estate. Realty owns interests in apartment buildings, commercial properties, office buildings and shopping centers, hotels and land. Classes of Realty's securities are registered with SEC pursuant to Section 12(g) of the Exchange Act. On August 3, 1970, trading in Realty's securities was suspended by the American Stock Exchange ("Amex"), and on September 26, 1973, Realty's securities were delisted by Amex.

8. Peat, Marwick, Mitchell & Co. ("PMM") is a public accounting firm with principal offices at 345 Park Avenue, New York, New York. PMM audited Republic's financial statements for Republic's fiscal years ended December 31, 1970, 1971 and 1972.

9. Alexander Grant & Co. ("Grant") i a public accounting firm with its office in the Southern District of New York.

10. American Stock Exchange, Inc. ("Amex") is a registered securities exchange with its office and facilites located in the Southern District of New York.

11. Klein, Hinds & Finke ("KHF") is a public accounting firm with its office in the Southern District of New York.

12. Royal National Bank ("Royal") is a national banking institution with its office in the Southern District of New York.

13. Eliot Janeway, Everett Smith, Holbart Taylor, Jr., David Stein, Homer Chapin, Hilary Evers, Jr., Sam Gittlin, Arthur Stang, A. H. Franklin, Robert Haslett, J. P. Leuzzi, at all or during a portion of the relevant time herein, were directors of Realty and actively involved in knowledge and activity relative to the violative conduct hereinafter alleged.

14. Westheimer, Fein, Berger & Co. ("Westheimer") is a public accounting firm with its offices at 1301 Avenue of the Americas, New York, New York. Westheimer audited Realty's financial statements for Realty's fiscal years ended March 31, 1971, 1972 and 1973.

15. Morris Karp ("Karp") resides at 63 Mamaroneck Road, Scarsdale, New York, is president, chief executive officer and a director of Realty.

16. Jerome Socher ("Socher") resides at 136 East 36th Street, New York, New York, is treasurer of Realty and has been responsible for preparation of its quarterly and annual financial statements.

17. Theodore P. Beasley ("T. Beasley") resides at 4260 Bordeaux, Dallas, Texas, at all times relevant hereto, has been Republic's chief executive officer, Chairman of the Board, and member of its Executive Committee and Finance and Investment Committee.

18. Clarence J. Skelton ("Skelton") resides at 7517 Spring Valley Road, Dallas, Texas, at all times relevant herein, was president and director of Republic and member of its Executive Committee and Finance and Investment Committee. Skelton is now vice chairman of the board of Republic and chairman of Republic's Executve Committee.

19. Ronald Rex Beasley ("R. Beasley") resides at 3785 West Bay Circle, Dallas, Texas, at all times relevant hereto was executive vice president and a director of Republic, chairman of its Executive Committee and a member of its Finance and Investment Committee.

20. Robert P. Brady ("Brady") resides at 7069 Irongate, Dallas, Texas, at all times relevant hereto, was executive vice president chief actuary and director of Republic and member of its Executive Committee and Finance and Investment Committee.

21. Thomas G. Nash, Jr. ("Nash") resides at 5545 Charlestown Drive, Dallas, Texas, at all times relevant herein, was general counsel of Republic, executive vice president in charge of its Investment Division, director of its Executive Committee and Finance and Investment Committee. Nash is now president of Republic.

22. Samuel P. Smoot ("Smoot") resides at 6806 Stephanie, Dallas, Texas, at all times relevant hereto, was senior vice president, treasurer and director of Republic and member of its Executive Committee and its Finance and Investment Committee.

23. Neil N. Stanley ("Stanley") resides at 3503 Hillbrook, Dallas, Texas, at all times relevant hereto was vice president and actuary of Republic and its chief financial officer with responsibility of preparing its financial statements.

24. Hilary H. Evers ("Evers") resides at 2374 Grandin Road, Cincinnati, Ohio, is a mortgage and real estate broker. He served as director of Realty from 1968 to 1969. In 1971 and 1972 he acted as a "finder" of appraisers and appraisals for Realty.

25. Phelim F. O'Toole, Jr. ("O'Toole") resides at 18 South Kings Highway, St. Louis, Missouri, is president of Phelim O'Toole Real Estate Company, St. Louis, Missouri, and is a real estate appraiser and a Member of the Appraisal Institute ("M.A.I.").

26. Standard & Poor's Corp. has its offices at 345 Hudson Street, New York, New York and is engaged in the publication of securities, magazines and information.

27. A. M. Best Company ("Best") has its offices at Park Avenue, Morristown, New Jersey and is engaged in the publication of reference publications.

BACKGROUND INFORMATION

28. Between January 1968 and April 1970, Republic invested $17 million in Realty and $4.6 million in Realty's affiliate, First National Realty & Construction Corp. ("FNR"). During times relevant hereto, defendant Karp was president and principal executive officer of FNR. Republic's initial investment in Realty and FNR, which in large part financed acquisition by Realty of properties bearing Republic mortgages, consisted of the following:

29. (A) On or about January 16, 1968, Republic purchased $6 million of 7½% notes of Realty.

(B) On or about June 5, 1968, Republic purchased $1.5 million of 6% debentures of Realty.

(C) On or about December 13, 1968, Republic purchased $2.6 million of 6% notes of FNR.

(D) On or about August 28, 1969, Republic purchased $2 million of 7¾% notes of FNR.

(E) On or about September 25, 1969, Republic for $2 million purchased 20,000 shares of Realty senior preferred stock.

(F) On or about April 16, 1969, Republic purchased for $1.5 million, 15,000 shares of Realty senior preferred stock.

(G) On or about April 29, 1970, Republic purchased $6 million of 7½% notes of Realty.

30. Prior to 1970, Republic disposed of $3 million of the 7½% Realty notes it acquired January 1968. At September 1970, Republic had net investment in Realty and FNR of $18.6 million. Additionally, by September 1970, Republic was holding over $30 million in mortgages on properties owned or managed by Realty or FNR which had been acquired as described in the paragraph below.

31. Concurrently and as a condition to purchase of securities of Realty and FNR by Republic described above, both Realty and FNR acquired real estate properties from third parties who owned the properties subject to large Republic mortgages. The properties included five hotels, office buildings, residential property, and vacant land. The properties had operated at cash flow deficits in that income was insufficient to pay expenses of operating and also to provide for debt service to Republic. Realty could not have afforded to make the cash investment necessary to purchase and operate the properties at a cash flow loss without the making of the above-described investments in Realty by Republic.

32. In mid-1970, Realty's financial condition worsened. In August, 1970, Amex suspended trading in Realty securities. Realty's then independent public accountants, Alexander Grant & Co., disclaimed an opinion on Realty's financial statements for the year ended March 31, 1970. On August 3, 1970, Realty disclosed it expected to report a loss of $8.7 million for the year ended March 31, 1970. In September 1970, Realty reported a loss of $13.2 million for the year ended March 31, 1970 and simultaneously restated earnings for its prior fiscal year ended March 31, 1969 downward from $1.52 per share to $0.02 per share. Realty's accumulated deficit at March 31, 1970 was $16.6 million.

33. By September 1970, Realty was in financial trouble, Republic's investment in Realty was in jeopardy and Republic faced a write-down of a large portion of the Realty paper it held.

COUNT I

Violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

34. All allegations above are hereby realleged and incorporated herein.

35. From in or about September 1970 to the present, defendants, directly and indirectly, singly and in concert and as part of one long course of conduct, and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make statements made not misleading, and engaged in acts, practices and a course of business which operated as fraud and deceit upon persons in connection with pur-

chase and sale of securities, including securities of Republic and Realty and FNR, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5), as more fully described herein.

36. The aforesaid scheme, fraudulent acts and course of business consisted of T. Beasley, Skelton, Nash, R. Beasley Brady, Smoot and Stanley, in concert with the others, having Republic, among other acts with the other defendants.

(A) invest further substantial sums in Realty and FNR in an attempt to protect and conceal the fact of Republic's failing investment in Realty and FNR;

(B) conceal from Republic's shareholders and the Insurance Department of the State of Texas such further investment by Republic in Realty and FNR by converting such investment initially to companies serving as conduits for channeling Republic funds and subsequently by converting such investment into excessive mortgages on properties acquired by Realty and FNR with funds from Republic;

(C) fraudulently report material amounts of income of Republic which was in fact generated by Republic's advancing substantial sums to Realty and FNR which were immediately returned to Republic as interest payments on debt owed to Republic;

(D) overstate assets of Republic in reports furnished to shareholders of Republic and to the Insurance Department of the State of Texas.

37. In September 1970, Realty's liquidity and cash flow problems had become acute, and Realty was unable to meet

its current obligations including obligations to Republic. Republic requested that Mercantile National Bank of Dallas, Texas ("Mercantile") make a loan to Realty. On September 16, 1970, Mercantile loaned $12 million to Realty at 10% interest. The loan was supported by an irrevocable take-out commitment by Republic to Mercantile. Under the terms of the commitment, Republic agreed to purchase on March 15, 1971 a 50% participation in the balance of the principal and interest then owing, and on September 15, 1972 to purchase the balance of the principal and interest. Mercantile is and has been Republic's principal bank. T. Beasley is a director of Mercantile and J. D. Francis, Chairman of the Board of Mercantile, is a director of Republic.

38. Approximately half the proceeds of the $12 million Mercantile loan to Realty were immediately disbursed to Republic, as follows:

(A) $4,626,562.50 to repurchase, at par plus accrued interest, $4.5 million face amount of 7½% notes of Realty;

(B) $481,500 to repurchase from Republic that face amount of Realty's 6% debentures; and

(C) Realty loaned FNR $1 million with which FNR purchased from Republic $1 million face amount of 6% debentures of Realty.

39. The infusion of new capital into Realty and its affiliates by Republic through the Mercantile loan in September 1970 enabled Realty to have funds to pay to Republic current and accrued interest on notes, mortgages and obligations. Further more, the infusion of funds enabled Realty to repurchase at par plus accrued interest, the said Realty

notes and debentures. At the time, such notes and debentures were worth considerably less than par value.

40. By letter dated October 30, 1970, the Committee on Valuation of Securities of the National Association of Insurance Commissioners ("NAIC") advised Republic of the recommendation of its staff that debentures of Realty be valued at zero for statement purposes at December 31, 1970.

41. On November 6, 1970, Arthur Andersen & Co. then Republic's auditors, sent a letter to Republic which stated, among other things:

> "Based upon information now available to us, we have concluded that qualification of our auditor's report relating to the 1970 financial statements of Republic National Life Insurance Company will be required. The extent of such qualification is not determinable at this time. . . ."

42. Said letter also cited the significance of Republic's involvement with Realty, likelihood of its material effects on Republic's financial position at December 31, 1970 and results of Republic's operation for the year then ending, and then set forth Andersen's belief that Republic's 1970 financial statements should include complete and informative disclosure of these matters and that examples of such disclosures include:

> "Segregation within the balance sheet of all investments in Realty and affiliates."
>
> "Information regarding commitments to Realty and affiliates together with appropriate description as to Realty's current financial condition."

"Information relating to all significant transactions between Republic and Realty or its affiliates. . . ."

43. In December 1970, Republic terminated Andersen's engagement as auditor. In February 1971, Republic's financial statements for calendar year 1970 were signed by defendant Stanley, Republic's actuary, not then certified by independent public accountants. In February 1972, PMM issued unqualified opinions on Republic's 1970 and 1971 financial statements.

44. On or about December 11, 1970, Republic mailed a proxy statement to its shareholders, seeking authorization to issue 1,490,000 shares of Republic stock for all outstanding shares of Pacific National Life Assurance Co. and 140,000 shares of Republic stock for all outstanding shares of Eastern Empire Life Insurance Company. Such proxy statement included financial statements of Republic for nine months ended September 30, 1970.

45. On or about December 11, 1970, Pacific mailed a proxy statement for the proposed merger to Pacific's shareholders. Pacific's proxy statement included financial statements of Republic for the fiscal year ended December 31, 1969 which were supplied to Pacific by Republic.

46. The financial statements of Republic contained in the Republic proxy statement were false and misleading in that they contained no disclosure of Republic's large investment in Realty as of September 30, 1970. Furthermore, such financial statements reported income for Republic's first three quarters of 1970 of $2.3 million. Of such income, a material percentage arose from transactions between Republic and Realty and should not have been recognized by Republic as income, with Realty's problems.

47. The proxy materials are false and misleading in that the substance, nature, extent and materiality of Republic's involvement with Realty is not disclosed, nor Realty's problems.

48. The mergers of Pacific and Eastern into Republic were consummated, and the aforementioned false and misleading proxies were voted upon and executed by the respective shareholders, not knowing of Realty's distress.

49. In December 1970, immediately prior to close of Republic's fiscal year, Republic and Realty entered into a $25.7 million transaction which had the effect of restructuring Realty's debt to Republic and paying off Realty's loan from Mercantile, thereby removing Republic from its take-out commitment. Republic made loans totaling $23 million to four corporations which were either subsidiaries of Realty or its affiliates or in nominee names, but then under control of Realty, called Automated Realty Services, East Side Equities, Grayerat Corp. and Property Investment Company. The four corporations simultaneously paid for assets that were placed in them by Realty at Realty-fixed prices. Realty received the $23 million for such assets. The assets included real property, notes, debentures, mortgages, leaseholds, and stock interests in other Realty subsidiaries. In addition, Republic purchased from Realty six mortgages for an aggregate of $3,235,000.

50. The money received by Realty in the ansaction were used as follows:

(A) $12,293,333 was used to pay off, wit[h] interest the Mercantile loan in which Republic had the take-out commitment.

(B) $4,590,937 went back to Republic to repurchase from Republic some of the 7½% Realty notes at par plus accrued interest.

(C) $3,525,180 went to Republic to repurchase from Republic at par plus accrued interest the 35,000 shares of Realty preferred stock which Republic had previously purchased from Realty. The preferred stock was simultaneously "sold" to Automated Realty.

(D) In addition, Realty made November and December mortgage payments to Republic on some mortgage obligations. The FNR note payments due in early 1971 were paid in advance, hotel mortgage payments then in arrears were paid, and future mortgage payments due Republic in amounts exceeding $400,000 were placed in escrow for payment to Republic.

51. The effect of the December 1970 transaction was that Republic removed the remaining unsecured Realty securities, which it still held after the Mercantile loan transaction of September 1970, from its books at par without posting losses, was removed from its take-out commitment to Mercantile, and cured defaults to Republic mortgages which Realty was unable to pay. At conclusion of the transaction, Republic held notes of four Realty-controlled corporations whose only assets were acquired from Realty at Realty-set prices.

52. At close of 1970, Republic's aggregate investment in Realty and its affiliates totalled in excess of $56 million, out of total reported Republic assets of $277 million.

53. From January 1, 1971 through September 30, 1971, Realty's liquidity problems continued. Realty closed its

fiscal year on March 3, 1971 with a loss as reflected on its annual report of $13.6 million. For Realty and its affiliates to remain reasonably current during this period on its obligations, it was necessary for Republic to infuse new cash to Realty through more transactions in which Realty would end up with cash to give back to Republic, thus hiding Realty's problems.

(A) New mortgages were placed by Republic directly on real properties owned by Realty and its affiliates which totalled in excess of $2.2 million.

(B) Five mortgages owned by Realty were transferred to Republic for $920,000.

(C) Realty placed some assets, mainly leasehold interests in Washington, D. C. area residential properties into a shell corporation, Q. D. Realty, and obtained a non-recourse loan from Republic for Q. D. Realty of $4 million. Realty received the $4 million from Q. D. Realty in exchange for its equity interest in the assets. After completion of the transaction in May 1971, the stock of Q. D. Realty was transferred to a third party for no consideration.

(D) Realty sold leasehold interests to Investors Funding Corporation of New York ("Investors") for $2 million. Realty gave Investors an option to pay $2 million in cash or give to Realty $3 million in face amount of long-term debentures of Investors with a less-than-current market interest rate. Investors elected to pay Realty in its debentures. Realty arranged to transfer the debentures to Republic for $3 million.

(E) The cash received by Realty in parts (A), (B), (C) and (D) above was in large part directly

returned to Republic to pay accrued and past due interest and to restructure existing debt. In the largest of these transactions, the $4 million received from Republic by Realty in the Q. D. Realty transaction, $2,663,000 went to Republic to pay accrued interest and reduce principal of a loan made to Grayerat Corporation, by Republic in December 1970 in the transaction described above.

54. In October 1971, Republic loaned Product Enterprises Corp., a Realty affiliate, $6 million secured by Product Enterprise nonrecourse debentures. The $6 million went to Realty for assets which were mainly various interests in real properties. Realty set the prices. Realty simultaneously used $4 million to repurchase from Republic, notes at par value plus accrued interest, of Property Investment Company as above described.

55. In October 1971, Republic advanced $8 million to a shell corporation called Unity Industries by purchasing Unity's debenture. The cash was transferred to Realty for Realty assets which were placed in Unity Industries at Realty-set prices. One asset placed in Unity was the fee interest in a ranch in Idaho upon which Republic had previously placed a $1.2 million mortgage. The same property had been sold just prior to Republic's placing the $1.2 million mortgage for $470,000. Q. D. Realty which had been loaned $4 million by Republic in May 1971, was merged into Unity. Unity's aggregate debt to Republic was over $13 million, and based upon operating history of the assets which were placed into Unity, it had no prospect for meeting its obligations. The Unity stock was transferred to third parties for no consideration. The cash received by Realty in this transaction in large part went back to Republic to pay off Realty debt.

56. In October 1971, Republic decided to rid itself of notes and debentures it held on various Realty-related entities which had borrowed Republic money to purchase Realty assets.

57. Republic advised Realty that it would accept real property supported by appraisals in satisfaction of debt. Republic agreed it would place large mortgages on raw land to be acquired by Realty subsidiaries or nominees on a non-recourse basis to Realty, in exchange for notes and debentures it held on its books.

58. Realty did not own large tracts of land and went into the market and arranged to buy a number of tracts through nominee subsidiaries. Since Realty had no cash to purchase the tracts, it was necessary for Republic to place the mortgages on the land simultaneously with the closing of the purchase of the land by Realty from third parties so that Realty could use part of the proceeds of the mortgages to pay for the land.

59. In the first of the mortgage-swap transactions, on November 30, 1971, R. E. Duchess Corp., a Realty subsidiary, purchased 1,040 acre tract in Loudoun County, Virginia, for $2,700,000. Simultaneously, R. E. Duchess borrowed $6,500,000 from Republic secured by the land and prepaid $500,000 in interest to Republic. Republic gave Realty its check for $6.5 million. Realty used $2,700,000 to pay for the land and $2 million went back to Republic for "purchase" of debentures of Unity Industries. Realty retained approximately $1,200,000 for corporate purposes.

60. On December 2, 1971, nine days before the close of Republic's fiscal year, Realty and Republic closed a transaction involving in excess of $31 million, the net result

of which was the removal of debentures of Unity, Q. D. Realty, Automated and Product from Republic's books. The major component of the transaction was swap of debentures for mortgages as in the Loudoun transaction above. It also involved cancellation of pre-existing Realty debt. The components of the transaction which occurred on December 22, 1971, are as follows:

(A) A Realty subsidiary, Wambat, purchased a 21,000 acre tract in the Adirondacks region of New York State for $3,150,000. Republic simultaneously placed a $13,450,000 mortgage on the property, and Republic money was used by Realty to pay for the land.

(B) Republic placed a mortgage for $1.4 million on a 123 acre tract in West Palm Beach, Florida, in favor of a Realty nominee subsidiary, Wambach Realty Corp. Realty contracted to purchase the land for $622,000 and closed the purchase on the same date as the mortgage, using Republic money to pay.

(C) Republic made a loan of $4,100,000 to a Realty subsidiary, Medical Arts Sanitarium, Inc., which was operating a hospital in New York.

(D) Realty contracted for purchase of a 1,395 acre tract in Lake Havasu, Arizona, for $2.4 million. On December 22, 1971, Realty sold it to Republic for $5.2 million using Republic money from the proceeds.

(E) Realty sold to Republic a 206 acre tract in Harriman, New York, for $4.4 million. At the same time, it closed on its contract to purchase the land for the sum of $1,562,000. Realty used Republic money to purchase the land.

(F) Realty purchased an A&P Supermarket in Yonkers, New York, for $365,000 and simultaneously resold it to Republic for $550,000.

61. In the December 22, 1971 transaction, Realty received an aggregate of $31,103,000 from Republic, of which $8 million was used to purchase the land described above. Realty retained $2.6 million. The remainder came to Republic for interest payments on other outstanding mortgages. $20,293,000 went back to Republic, as follows:

(A) For purchase of $6,800,000 in face amount of 8% debentures of Unity Industries, Inc.

(B) For purchase of $6,000,000 in face amount of 8% debentures of Product Enterprises Corp.

(C) For purchase of $4,000,000 Promissory Note of Q. D. Realty, Inc.

(D) For purchase of $3,000,000 in face amount of debentures of Automated Realty Services, Inc.

(E) To cover accrued interest on the above.

62. At year-end 1971, Republic's investment in Realty and Realty-related entities aggregated in excess of $86 million, out of total reported assets of $412 million.

63. The two largest mortgages on Republic's books in 1972 were the Loudoun and the Adirondacks mortgages. At least by the latter part of 1972, Republic realized that the Realty nominee corporations which owned the fee interest in the two mortgages would not be making the large payments soon becoming due. Realty and Republic agreed upon a plan by which the mortgages could be kept current.

64. In October 1972, Republic came to Realty for help. Realty owned the fee interest of an industrial complex in

Enfield, Connecticut, known as the Bigelow-Sanford Complex. The principal tenant in the complex was the Bigelow-Sanford Carpet Company. The carpet company had been phasing out its operations for several years and had given Realty notice that it did not intend to renew its lease which would expire in July 1973. There were no other major tenants of the complex and prospects for finding a tenant for the antiquated industrial site were dim. Several years earlier, Realty had offered Republic an interest in the Bigelow-Sanford Complex, but after inspecting the property Republic had refused to make any investment therein. In October 1972, however, Republic and Realty devised a scheme whereby the mortgage payments on the Adirondacks and Loudoun tracts could be paid. The mechanics of the "Enfield" transaction were as follows.

65. Realty created a lease of the Bigelow-Sanford tract to Enfield Properties Corp., a Realty subsidiary, providing for annual lease payment, to Realty, of $100,000 per year. With the lease as security, Republic granted a $5 million leasehold mortgage to Enfield. As the carpet company's lease was soon to expire and there were no other tenants for the vast tract in sight, Enfield Properties Corp. had little prospect of being able to make the annual payment to Realty of its mortgage payment to Republic. As part of the transaction, Enfield Properties Corp. acquired for $15,000 the two shell corporations that held title to the Adirondacks property encumbered by a $13.5 million Republic mortgage and the Loudoun, Virginia, tract encumbered by a $6.5 million Republic mortgage. Of the $5 million Republic paid to Enfield for the leasehold mortgage, $1.7 million went back to Republic to pay the Republic mortgages on the two tracts soon becoming due. Republic thus paid its mortgages with its own money. Republic

treated the greatest part of the $1.7 million as income on Republic's income statement. Enfield transferred the remaining $3.3 million to Realty and Realty sold some debentures and other assets of dubious value to Enfield for a part of the $3.3 million. Realty also satisfied the second and third mortgages on their fee interest which totalled $3,650,000 for a fraction of their face amount. Realty ended up with in excess of $2 million in cash. After the above transactions had been concluded, Louis Hubshman, Jr. ("Hubshman"), former vice president of Realty, acquired Enfield for no consideration, knowing that he was aiding the scheme.

66. On June 30, 1972, Realty purchased a shopping center in Levittown, Pennsylvania, for $2.3 million and simultaneously obtained a mortgage from Republic for $4 million, using proceeds of the mortgage to pay for the property. Of the remainder, $1,150,000 was returned to Republic as prepayment on various hotel mortgages.

67. On October 6, 1972, Republic acquired from Realty in satisfaction of $1,500,000 in Realty-related indebtedness, two notes of Great Plains Hotel Co., Inc. The Great Plains notes aggregate $3,650,000 in face amount, bear no interest and do not provide for payment of principal until December 31, 1987, at which time payments of annual installments of $150,000 are scheduled to begin.

68. On October 20, 1972, Republic paid $1,200,000 to a Realty affiliate, FNR, to purchase a corporate note of Educational Development & Research Corporation. Proceeds from this transaction were returned to Republic to pay Realty-related debt.

69. On October 5, 1972, Republic granted Realty a $3 million mortgage on a leasehold interest in a shopping

center which was purchased contemporaneously by Realty. Of the $3 million received by Realty, $1 million was used to acquire Realty's interest in the shopping center and $2 million returned to Republic to acquire, at par plus accrued interest, notes and mortgages previously transferred to Republic by Realty. The notes and mortgages were secured by decaying properties in Newark, Patterson and Hoboken, New Jersey, and Albany, New York. Most were in default.

70. At year-end 1972, Republic's investment in Realty and related entities aggregated at least $108 million, out of total reported assets of $448 million.

71. While Republic was continuously making new loans to Realty and its related parties from January 1, 1968 through the present, Realty and its affiliated companies and persons were obligated to pay to Republic interest on the loans and mortgages already on Republic's books. Republic accrues such interest due and payable as income in the period of accrual.

72. In Republic's fiscal years 1970, 1971 and 1972, a material portion of Republic's reported income was derived from accrued interest on Realty-related debt. The amounts of such pre-tax income arising from Realty transactions is at least as follows (reported net income of Republic in parentheses):

Year ended December 31,

1970	$2	million	($4,083,274)
1971	$3	million	($8,617,305)
1972	$3.5	million	($10,381,515)

73. While Republic was reporting interest accrued and received on Realty-related debt as income in its annual

reports to its shareholders, to the SEC and the public, it was continuously making new loans and expanding its debt base with Realty and Realty-related entities. Of such reported income, a material percentage was attributable to cash received by Republic from Realty. The source of this cash was loans made to Realty by Republic when financing was not otherwise available to Realty. The ultimate collectibility of these loans was in doubt. Republic should not have recognized income therefrom, knowing of Realty's condition.

74. Republic, in its fiscal years ended December 31, 1970, 1971 and 1972 invested a substantial portion of its assets in Realty, its affiliates, nominees and related entities or in properties which had been obtained from Realty and its related companies in satisfaction of debt. Republic failed to disclose that a large portion of its assets had been invested in Realty, then in grave financial difficulty and aided Realty and other defendants in misrepresenting the true nature of Realty's condition.

75. Republic thus overstated its assets in its financial reports filed with the SEC and others in order to hide the Realty financial problems and as part of the scheme to withhold disclosure of the substance, nature, extent and materiality of Republic's transactions with Realty, and to buoy up Realty's image.

76. T. Beasley, Nash, R. Beasley, Brady, Skelton, Smoot and Stanley participated in the aforesaid scheme and fraudulent course of conduct in execution of their respective offices at Republic. Nash negotiated terms of all Republic-Realty transactions from February 1, 1972 until the present. T. Beasley, as chief executive officer of Republic, is responsible and exercised supervisory and review func-

tion for conduct of all Republic's affairs including Republic's investments in Realty. T. Beasley participated in negotiation of significant transactions aforesaid. R. Beasley, Brady, Skelton and Smoot, in addition to their other offices, were members of Republic's Finance and Investment Committee, which approved virtually every transaction between Republic and Realty, and all said defendants were members of that Committee. R. Beasley, Brady, Skelton, Smoot, Nash and T. Beasley, at all relevant times served on Republic's Board of Directors and were charged with ultimate responsibility for Republic affairs including its investments and its non-involvement in the fraudulent scheme herein described.

77. From in or about January 1, 1970 to the present, PMM and Republic and the individual defendants connected with Republic directly and indirectly, singly and in concert and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty and FNR, in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

78. As a part of the aforesaid scheme, PMM issued its audit report, including its unqualified opinion on the financial statements of Republic for the years 1970, 1971 and 1972 when such financial statements were materially false and misleading in the manner and in the respects more fully set forth herein.

Herman Complaint

79. Prior to issuing its auditor's report for Republic's fiscal years 1970 and 1971, PMM had received and reviewed Arthur Andersen & Co.'s November 6, 1970 letter to Republic, the outlines of which are alleged above.

COUNT II

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

The preceding paragraphs are realleged and incorporated herein.

80. From in or about March 1, 1969 to the present, Realty, FNR, Karp and Socher, directly and indirectly, singly and in concert and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities, including those of Realty and Republic, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

81. Karp and Socher caused Realty and FNR to:

(A) Engage in and report transactions in Realty's and FNR's 1971, 1972 and 1973 financial statements, as bona fide, arm's-length business transactions when in fact such transactions were not as reported and were part of a fraudulent scheme and long course of conduct which had as its purpose creation and main-

tenance of appearance to the investing public, shareholders, SEC and Amex that Realty and FNR were and are viable business entities when in fact they were not and were close to ceasing to exist as ongoing entities and;

(B) Falsely and fraudulently report as income proceeds of Republic mortgages when in fact such proceeds were immediately channeled back to Republic.

82. In March 1972, immediately prior to the close of Realty's fiscal year, Realty transferred the subsidiaries holding title to the Adirondacks and Loudoun land shell nominees for nominal considerations. Realty falsely declared as income for its fiscal year ended March 31, 1972, the excess of Republic mortgages ($20 million) over purchase prices ($6 million). Realty never realized any of the $14 million it reported as income since the $14 million went immediately back to Republic as a part of the fraudulent scheme for debentures of Realty-related entities taken back by Realty at par value. At the time, such debentures were worth a small fraction of face value.

83. On or about February 11, 1971, Realty created a corporate entity called S. D. Associates, Inc. ("S. D."). On February 12, 1971, Realty transferred assets into S. D., namely several mortgage notes on apartment properties and an operating lease on an apartment building in New Jersey managed by Realty. These assets were carried on Realty's books as approximately $100,000. S. D. issued to Realty a $4,000,000 note at a 5% interest rate, with interest and principal payable in a single payment in 1976. The note was signed at Karp's request by the owner of a small men's haberdashery store, who signed the note in his capa-

city as president of S. D. The note was a corporate note without recourse to the party who signed on behalf of S. D.

84. On February 12, 1971, Realty sold to S. D. an option to acquire, for $1 million, all assets of Realty Equities Suffolk Downs, Inc. which owned a racetrack. S. D. on the same date transferred its option to National Raceways, Inc., which then exercised the option by paying Realty $1 million. The document transferring to National S. D.'s option on the racetrack assets was signed by the same individual who signed the $4 million note of S. D.

85. In August 1971, Realty, its subsidiaries and affiliates were indebted to Royal National Bank of New York ("Royal") for $8,350,139. Royal was over its legal lending limit with respect to its Realty-related debt. To create the appearance of elimination of such debt, Realty and Royal arranged the following transactions on August 5, 1971:

(A) Republic loaned Realty $3 million which Realty paid to Royal;

(B) Royal purchased from Realty for $2 million a mortgage on premises known as the Queen Charlotte Hotel in Charlotte, North Carolina. Republic delivered a letter agreement to Royal pursuant to which Republic agreed to purchase such mortgage on or before August 1, 1972 at par plus accrued interest; and

(C) Simultaneously, Royal loaned $3,350,139 to S. D., which transferred said sum to Realty, purportedly as partial prepayment of the $4 million note of S. D. described above. This obligation to Royal remains unpaid and outstanding.

86. An S. D. note to Royal for $3,350,139 and other related documents were signed by a Realty nominee who was represented as vice president of S. D. In fact, however, the nominee was employed by Realty as a building superintendent in a New Jersey apartment building managed by Realty. He had no interest in S. D. and participated in none of its affairs except for the signing of various S. D. documents which he signed only as directed to do so by a Realty officer.

87. Realty has controlled S. D. from inception. Realty has accounted for transactions with S. D. by reporting income statement and balance sheet items for its 1971, 1972 and 1973 fiscal years in the same manner as if Realty had negotiated such transactions with an independent party.

88. Accordingly, in view of the sham nature of the Realty-S. D. transactions, material adjustments were necessary to Realty's financial statements for its 1971, 1972 and 1973 fiscal years and the Realty financial statements for its fiscal years ended March 31, 1971, 1972 and 1973, sent to Realty's securities holders, filed with the SEC and filed with AMEX, are materially false and misleading.

COUNT III

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

The preceding paragraphs are realleged herein.

89. From in or about January 1, 1970 to the present, Realty and Westheimer, Fine, Berger & Co. ("Westheimer"), directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails,

employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities, including those of Realty, in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

90. Westheimer audited financial statements of Realty for Realty's fiscal years ended March 31, 1971, 1972 and 1973.

91. Westheimer was the third independent auditor to begin an audit of Realty's financial statements for its 1971 and 1972 fiscal years. Westheimer was put on notice by consultation with Westheimer's immediate predecessor, David Berdon & Co. ("Berdon") that Berdon's difficulty in completing its audit of Realty's financial statements was its inability to satisfy itself by ordinary auditing procedures as to the nature and character of a number of Realty-Republic transactions. Westheimer was aware that Berdon's engagement was terminated by Realty after Berdon stated it would have to examine the books and records of Republic as an extended auditing procedure prior to issuance of its auditor's report.

92. Westheimer permitted its audit reports, including its qualified opinion, to accompany Realty's financial statements for the fiscal years ended March 31, 1971 and 1972 when the financial statements were materially false and misleading in that they reported the transactions detailed herein including but not limited to the Loudoun, Adirondacks and S. D. transactions, as bona fide arm's-length busi-

ness transactions, when in fact such transactions were not as reported and were part of a fraudulent scheme and long course of conduct. Such financial statements also falsely and fraudulently reported as income the proceeds of the Republic mortgages in the Loudoun and Adirondacks transactions.

COUNT IV

[Section 13(a) of the Exchange Act and Rule 13a-1 thereunder]

93. The preceding paragraphs are realleged and incorporated herein.

94. Realty's financial reports for its fiscal years ended March 31, 1971, 1972 and 1973 contain, among other things, reports of earnings which are false and misleading and also report transactions as bona fide arm's-length transactions which were sham transactions which took place between Realty and its affiliates, nominees and other related entities.

95. Reports, including said misleading statements which have been filed with the SEC are Realty's annual reports on Form 10-K for its fiscal years ended March 31, 1971, 1972 and 1973.

96. By reason of the foregoing, defendants Realty, Westheimer, Karp and Socher have violated and aided and abetted violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

COUNT V

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

97. The preceding paragraphs are realleged and incorporated herein.

98. From on or about December 1, 1971 to the present date, Realty, Evers, O'Toole and Karp directly and indirectly, singly and in concert and aiding and abetting each other and other defendants, by use and means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon persons in connection with the purchase and sale of securities of Realty and Republic, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

99. As a condition to entering into the Loudoun transaction and other transactions described which closed on December 22, 19[illegible], Republic requested that Realty supply it with appraisals of the respective properties reflecting values to justify the amount of purchase price or amount of the mortgages. Republic required that the appraisals be done by an appraiser who is a Member of the Appraisal Institute ("M.A.I.").

100. On December 14, 1971, Karp contracted with Evers, a former director of Realty who is not himself an appraiser, that for a total of $35,000 plus expenses, Evers would supply appraisals for properties in the Adirondacks;

Lake Havasu, Arizona; West Palm Beach, Florida; Harriman, New York; and an A&P store in Yonkers, New York.

101. Evers hired O'Toole to do the appraisals, paying O'Toole $12,500 of the $35,000 he received.

102. On December 17, 1971, Republic's Finance and Investment Committee approved the granting of mortgages for the purchase of properties involved in the transactions which closed on December 22, 1971. The appraisal reports submitted to Realty by O'Toole and Evers reflect the following values for the subject properties. The contemporaneous Realty purchase price is in parentheses:

Lake Havasu	$5.2 million	($2.4 million)
Harriman	$4.4 million	($1.8 million)
Adirondacks	$18 million	($3.1 million)
West Palm Beach	$2 million	($0.6 million)

103. O'Toole, accompanied by Evers, did not visit the sites of the subject properties until after the Republic Finance and Investment Committee approved the transactions on December 17, 1971. The appraisals written by O'Toole were delivered by Realty to Republic January 4, 1972.

104. The appraisals were backdated to December 13, 1971, prior to the meeting of Republic's Finance and Investment Committee on December 17, 1971. The appraisals were fraudulent and inflated and ignored contemporaneous purchase prices of properties involved, as well as sales prices of comparable properties.

COUNT VI

[Section 10(b) of the Exchange Act and Rule 10b-5 thereunder]

105. The preceding paragraphs are realleged herein.

From in or about July 1, 1970 to the present, Realty and Karp, directly and indirectly, singly and in concert and aiding and abetting each other, by use of means and instrumentalities of interstate commerce and of mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty, all in violation of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder (17 CFR 240.10b-5).

106. On August 1, 1970, a dividend of 6¼ cents per share was payable on Realty's common shares. On July 31, 1970, Karp ordered $200,000 of funds of Avionics Investing Corporation, a small business investment company wholly-owned by Realty, transferred from Avionic's [sic] bank account in New Jersey to Realty's account at Bankers Trust Company in New York City.

107. The funds transferred were used to pay a dividend to Realty's common shareholders on August 1, 1970, at the rate of 6¼ cents per share and aggregated $196,152.90.

108. Realty had not disclosed it was able to pay its dividend on August 1, 1970 only through such means of illegally diverting funds. By so declaring and paying such

dividend, Realty perpetrated the false illusion that it was in relatively sound financial condition, when in fact it was in dire material financial straits.

109. On September 30, 1970, Realty repaid $200,000 to Avionics, with cash proceeds from the $12 million Mercantile loan to Realty arranged by Republic.

110. On June 15, 1972, the United States District Court for the District of Columbia, in a case captioned *SEC* v. *Realty Equities Corporation of New York*, C.A. No. 2544-71, entered an Order of Final Judgment of Permanent Injunction as follows:

> "1. That defendant shall file with the plaintiff Securities and Exchange Commission, and duplicate originals with the American Stock Exchange, an annual report on Form 10-K for its fiscal year ended March 31, 1972, by July 20, 1972; and
>
> "2. That defendant be and hereby is permanently enjoined and restrained from failing subsequent to July 20, 1972, to file with the plaintiff Securities and Exchange Commission, and duplicate originals with the American Stock Exchange, timely and accurate periodic reports on Forms 10-K, 9-K and 10-Q, or any other forms, in contravention of Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78m (a), and the rules and regulations thereunder."

111. Grant and KHF were the independent auditors for Realty during certain relevant portions of the periods above described. Each discovered and knew of certain and many ways of the material problems between Realty and Republic, all as hereinabove described. Grant and KHF informed Realty of the fact that the financial statements of Realty and

of FNR would not be unqualified and both firms were replaced as auditors for Realty. Yet both firms failed of their obligations to the public and to the SEC and Amex to fully disclose such facts and to alert the responsible authorities thereto. Instead each firm withheld the facts thereof in order to benefit themselves by not involving themselves therein, directly or indirectly, and to prevent damage to themselves and to other defendants, despite the further damage resulting to plaintiff and the class.

112. The securities of Realty were listed and traded on Amex until in or about September 26, 1973. Plaintiffs and the class purchased Realty securities in large portions because of the flexibility, liquidity, reliability, full disclosure and responsibility of securities listed and traded on Amex as propounded to the public. After taking no action for a considerable period of time, Amex conducted an extensive investigation of Realty and ascertained and came into possession of many or all of the facts herein alleged. Despite the aforesaid, Amex merely delisted Realty securities and withheld and omitted to disclose to plaintiffs and the class the facts which Amex had ascertained despite its duty to oversee such full disclosure, thus causing further damage to plaintiffs and the class.

113. This action is also brought to restrain defendants from continuing such acts, practices and courses of business. Defendants will, unless restrained and enjoined, continue to engage in acts, practices and courses of business of the nature and type alleged herein.

114. As a result of each of the wanton and deliberate acts above, performed in total disregard of rights of the public at large, plaintiffs and the class were damaged.

COUNT VII

115. The preceding paragraphs are realleged herein.

116. From in or about January 1, 1968 to the present, Standard & Poor's and Best's have directly and indirectly, by the publication in their periodicals of facts given to them by the above companies without verifying and investigating these facts and by stating the good financial condition and future outlook of Republic have mislead plaintiffs into purchasing shares in Republic.

WHEREFORE, plaintiffs demand judgment that:

(A) The rights of the named plaintiffs and the class against the defendants be determined and this action be determined as a class action as above defined;

(B) Plaintiffs and the class be awarded damages against defendants as determined and expenses, costs and disbursements incident to prosecution of this action, including reasonable accounting and counsel fees;

(C) Punitive and exemplary damages be assessed against defendants;

(D) This Court issue a preliminary and final judgment restraining and enjoining defendants, and those in concert or participation with them, from, directly or indirectly, in connection with the offer, purchase or sale of securities heretofore or hereafter issued by Republic and Realty, using means and instrumentalities of interstate commerce or mails to make false and misleading statements or omit to state material facts necessary in order to make statements made,

not misleading, and/or employ devices, schemes or artifacts to defraud, concerning but not limited to matters described herein, and to engage in any act, practice or course of business which operates or would operate as fraud or deceit upon any person, pertaining to matters in this complaint.

(E) An order issue appointing a receiver to take control of the books, records, assets and business of Republic and Realty and to conduct their affairs until further order of this Court and empowering and directing such receiver to, among other things, conduct a full investigation and arrange to oversee an accounting into the financial and other affairs of Republic and Realty and take appropriate action based thereon.

(F) Such other relief as the Court deems proper.

/s/ HARRY H. LIPSIG

Harry H. Lipsig
Attorney for Plaintiff
Office & P. O. Address
100 Church Street
New York, New York 10007
(212) 732-9000

(Verified by Kenneth I. Herman on March 15, 1974)

Transcript of Hearing, June 12, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MULTIDISTRICT LITIGATION

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74 Civ. 1115	74 Civ. 1137
74 Civ. 1225	74 Civ. 1192
74 Civ. 1248	74 Civ. 1622
74 Civ. 1255	74 Civ. 1846
74 Civ. 1294	74 Civ. 1875
74 Civ. 1668	74 Civ. 1942

Before: HON. MILTON POLLACK, D.J.

New York, June 12, 1974;
4:10 P.M.

APPEARANCES:

KASS, GOODKIND, WECHSLER & GERSTEIN, Esqs.,
Attorneys for Plaintiffs Miller and Gottlieb;
By: Stuart D. Wechsler, Esq., of Counsel.

IRA JAY SANDS, Esq.,
Attorney for Plaintiff Katz.

CAHILL, GORDON & REINDEL, Esqs.,
Attorneys for Peat, Marwick, Mitchell & Co.;
By: William E. Hegarty, Esq., of Counsel.

BATTLE, FOWLER, LIDSTONE, JAFFIN, PIERCE & KHEEL, Esqs.,
Attorneys for Defendant Realty Equities Corp.;
By: Raymond F. Gregory, Esq., of Counsel.

ARNOLD & PORTER, Esqs.,
Attorneys for Defendant Westheimer, Fine, Berger & Co.;
By: Daniel A. Rezneck, Esq., of Counsel.

Transcript of Hearing, June 12, 1974

NICKERSON, KRAMER, LOWENSTEIN, NESS,
KAMIN & SOLL, Esqs.,
By: Eugene Nickerson, Esq., of Counsel.

BOOTH & BARON, Esqs.,
Attorneys for Defendant Standard & Poor's Corp.:
By: George C. Baron, Esq., of Counsel.

DONALD F. AYERS, Esq.,
Attorney for Defendant A. M. Best Co., Inc.

WINTHROP, STIMSON, PUTNAM & ROBERTS, Esqs.,
Attorneys for Defendant Irving Trust Company:
By: Theodore Weitz, Esq., of Counsel.

TENZER, GREENBLATT, FALLEN & KAPLAN, Esqs.,
Attorneys for Defendant Evers:
By: Richard Kaye, Esq., of Counsel.

WILLIAMSON & SCHOEMAN, Esqs.,
Attorneys for Defendant Chapin:
By: Peter Williamson, Esq., of Counsel.

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, Esqs.,
Attorneys for Defendant Republic:
By: Sheldon Oliensis, Esq., of Counsel.

LORD, DAY & LORD, Esqs.,
Attorneys for Defendant American Stock Exchange:
By: R. Scott Greathead, Esq., of Counsel.

SHEARMAN & STERLING, Esqs.,
Attorneys for Defendant Alexander Grant & Co.:
By: James R. Hawkins, Esq., and
Richard P. Lasko, Esq., of Counsel.

Transcript of Hearing, June 12, 1974

Also Present:

Mr. D'Atri
Mr. Heller.

The Court: Gentlemen, as each of the lawyers rises to speak, so that we have a record of who you are, please give us your name, the name of your client, and, if possible, the docket number of the case for which you are speaking.

The purpose of the meeting today is to move along with a proposed order consolidating all of the civil litigations that are related, and to consolidate those cases presently for pretrial purposes and, possibly, ultimately, for purposes of trial.

To assist in the management of the cases we have had a meeting of the lawyers representing plaintiffs and suggestions have been made to the Court with respect to an order for consolidation which, basically, would provide for the consolidation of the cases for all pretrial purposes, and for the creation of a consolidated complaint which would set forth the claims asserted in the separate actions collated into separately stated counts by class and derivative categories, and provide for lead counsel, who would act as the clearing house for papers to be served and to be received in the consolidated proceedings, and also to provide for a stay of any new derivative suits in this district except for good cause shown.

The order that I contemplate would be without prejudice on the part of the defendants for a transfer of these suits to the District Court in Texas, Dallas Division, and be deemed to be without prejudice to the right of the judge selected to preside in the transferee district to establish any orders for the conduct of these litigations, whether or not consistent with the terms of the order that I would enter.

Transcript of Hearing, June 12, 1974

First, I would like to hear from counsel representing defendants as to any suggestions that they might have likewise to have lead counsel to the extent that that is feasible, and even if not feasible what suggestions counsel for defendants would have for the efficient conduct of the litigations pursuant to the suggestions heretofore made to consolidate the proceedings on the part of the plaintiffs.

I am mindful of the fact that the multi-district panel will be meeting on these matters, or some of them, in relation to the cases that are pending in Texas, Tennessee, and New York, and may have its own views about what should be done; of course, any order of the multi-district panel will be superior and will govern any order that I would enter here.

I have received a letter today, written in single space, five pages, from Mr. Barr, which is so long that I have not had time to do any more than to read the name of the sender on the first page while I was conducting other business. If it relates in any way to what we are about to do, if Mr. Barr is present he can call my attention to it perhaps in shorter form, otherwise I will read it as soon as I can get to it.

I suggest that in any order you choose the counsel for defendants advise me of any reaction to the proceedings as indicated.

I should add that this does not relate to any way to the action of the Securities and Exchange Commission against corporate defendants and others. We are talking only about the cases brought by private parties, securityholders.

Mr. Baron: My name is George Baron. We represent the defendant Standard & Poor's Corporation in the Herman action, 74 Civ. 1248.

What I would like to say, I think it hinges on whether or not there should be consolidation including our clients,

Standard & Poor's Corporation. We are named as a defendant in count 7 only of the Herman complaint; we are in no other case whatsoever.

We brought a motion on to dismiss that complaint before your Honor which was adjourned sine die for various reasons and, as I understood it from your Honor's secretary, it would be held in abeyance but would be heard on June 17th at 2.00 p.m. when there would be a more formal hearing of all counsel.

The Court: We are going to hear your motion at that time in its full vigor, and it is not adjourned for all purposes or any purpose other than the merits of your motion.

Mr. Baron: We would like to call to your Honor's attention that with regard to this consolidation, we oppose that so far as we are concerned. We don't think we should be harassed with 17 lawsuits involving specific transactions, actions, with which we have absolutely nothing to do.

The Court: Mr. Baron, that's somewhat unrealistic. If in fact, there is a basis for an assertion of a claim against your client—and I don't say there is, I don't know at this juncture—and if it is a claim that could properly be joined in a complaint, I see no reason why it could not be joined in a consolidated amended complaint reserving to you your rights to move for a severance and separate trial, if the interests of justice dictate.

Mr. Baron: May I take the Court's two "ifs" in order.

If a cause of action is alleged, which we say has not been alleged, and if it is appropriate as pendante jurisdiction in this litigation, our papers point out that neither of those two bases prevail here.

Thank you, your Honor.

Mr. Ayers: May I just note my appearance: Donald Ayers, attorney for A. M. Best Co., Inc., a defendant in the same action.

We are in exactly the same position as outlined by Mr. Baron. We are a publishing house named only in count No. 7, and we have, with your consent, your Honor, the same motion returnable to dismiss at that time.

The Court: I will hear you at that time on the merits.

Mr. Ayers: Thank you.

Mr. Williamson: Your Honor, my name is Peter Williamson. I represent Homer Chapin, a defendant in the Katz action, a defendant in the Herman action. He is named in each of those in only one count, the first.

Mr. Sands has consented to the dismissal to motion papers that I served on him but have not submitted to the Court yet. I have given similar motion papers to Mr. Lipsig, the attorney in the Herman action, and asked whether he would not consent thereby without objection by him.

With the Court's permission, I would like to submit those papers to your Honor on the 17th and, perhaps, the defendants, who I gather should not be defendants, at least in the case of my defendant, he should not be a defendant in any of these actions, could then be taken care of.

Would that be satisfactory? I represent Homer Chapin, a defendant only in the Katz and Homer actions.

The Court: I will say this: The consolidated amended complaint would be expected to embrace only the surviving claims and surviving defendants, so that if any claims, such as the Standard & Poor's, or the other one, go out, they will not be consolidated. They will have been disposed of.

Mr. Oliensis: May it please the Court, my name is Sheldon Oliensis of Kaye, Scholer. We represent Republic National Life Insurance Company, and I believe we are defendants in 11 of the 12 private actions that we are aware of.

Transcript of Hearing, June 12, 1974

The Court: I am not clear about the relative positions of your firm and the Washington firm that also has appeared on some records. Are you local counsel for traffic purposes or active counsel?

Mr. Oliensis: Extremely active counsel. We are counsel of record?

I am sure I am aware of why your Honor asked this question. The SEC, through error, served Washington counsel rather than us, and that has been rectified.

The Court: You received my letter?

Mr. Oliensis: Yes, your Honor.

The Court: For guidance of the others, my letter was a letter I sent to the SEC and to counsel for Republic calling to their attention a matter with relation to the relief of the SEC asserted and citing two cases to them, to ask them to supplement their presentation of tonnage with reference to the doctrine of those two cases. When I say "tonnage," I say that because except for the SEC case and one other case that came to my chambers today, in seven years I have yet to see a one-foot high collation of papers on any motion. Now I have two of them.

Mr. Oliensis: Your Honor, from our standpoint, we respectfully submit that consolidation is clearly necessary if these matters are to proceed in an orderly and organized way.

However, we are concerned about one aspect of the proposed order about which I would like to address myself. All the complaints—and that is irrespective of whether they have been filed on behalf of Realty stockholders or Republic stockholders, deal with precisely the same set of operative facts, and a few minor differences, deal with substantially the same defendants. The most dramatic illustration of that, I think, is if you put the Katz and Herman complaints

side by side, Katz is a complaint on behalf of Realty stockholders, and Herman is a complaint on behalf of Republic stockholders; once you get past the introductory formal paragraphs the complaints are verbatim for the next 25 or 30 pages.

There is nothing wrong with this at all, but it certainly demonstrates that what is involved in these litigations is a single set of facts irrespective of whether the plaintiff happens to be acting on behalf of Realty or Republic stockholders.

We don't always agree with everything the SEC does, but we think that the SEC method of handling this in their complaint is probably the easiest one in terms of judicial management.

The Court: The force of what you are saying is that instead of having two consolidated amended complaints there should be a single amended complaint and one lead lawyer, not two?

Mr. Oliensis: I agree on the first part. I was going to end my statement: While this is not a matter on which the defendants obviously ought to take a position, it would be perfectly appropriate to have allocations of duties within the framework of the single consolidated complaint.

The Court: I understand the situation.

Mr. Oliensis: The SEC complaint devotes its first two counts to Republic, the third count to Peat, Marwick, the fourth to Realty, and the fifth, sixth and seventh counts to various other defendants

We recognize that as your Honor had stated earlier today in the case of private actions sub-counts might be required as to class actions, derivative actions, bondholders, and that sort of thing. We believe that that is the way that would be the most orderly and efficient way, otherwise the defendants will find themselves in the position of having two

litigations which were identical as far as the defendants are concerned.

The Court: Before any other defendant speaks on this, I would like to talk to the two lawyers who have been taking the lead up to now to address themselves to this suggestion: What is wrong with it?

Mr. Wechsler: My name is Stuart Wechsler. I am counsel in the Miller case, which was originally the Republic case.

I think that there is some conflict which would be created and which may well be insurmountable by consolidating the complaints in this matter because there are different defendants, there are different classes from different companies pursuing the same pot of gold, in some cases from the same defendants. Decisions will have to be made by lead counsel in the Republic cases and lead counsel in the Realty cases with regard to strategy, which may be different. It would not seem to me to be appropriate, and it would also be unprecedented, to attempt to combine classes from two entirely different companies. There are probably going to be classes and sub-classes and derivative claims in both, and to conglomerate all of these really unrelated matters, unrelated in certain respects and related in that they arise from the same transaction, but the same transaction gets different people in different ways.

The Realty people were allegedly misled by different financial statements than were the Republic people. The fact that the same single transaction hurts two different classes does not necessarily mean that they should be consolidated. In fact, in this case where conflicts exist, I don't think it would be a good idea, and I think it would be unprecedented, and it would make the complaint unwieldy—

The Court: Mr. Oliensis, isn't your point sufficiently cared for if discovery, when and if that becomes appropri-

ate, is consolidated so that a particular defendant is not dragged around twice because there are two pieces of paper against you?

Mr. Oliensis: I think so, your Honor. I think that the consolidation should be for all purposes, otherwise you have a rather unusual occasion of two trials covering precisely the same ground.

The Court: You are talking about trials. I am talking about consolidated pretrial proceedings based upon separately consolidated amended complaints.

As I understood what you said to me, you said there ought to be a single consolidated amended complaint covering the claims relative to each of the two corporations that we are concerned here, that is the life insurance company and the realty company.

What Mr. Wechsler is saying, to set that all together in one legal action may put together conflicting situations both as to defendants' claims and classes.

It seems to me that confusion could be mounted very severely by attempting to have a single complaint. On the other hand, I see no reason why if a deposition is to be taken in the one case it should not go forth simultaneously and coextensively in the other case, so that deposition practice will not be repeated; and it is only the lead lawyer who is asking the questions who may shift around, but so far as your defendant or the witness is concerned he will be confronted only once rather than twice.

Why isn't that the more orderly procedure than having a single complaint also?

Mr. Oliensis: If it please the Court, I suspect that that would not hurt. I think what we have here is a single set of facts, and for the defendants to be taken through that same set of facts twice, even though it might be physically at the same time, would be duplicative.

The Court: Why twice? You cannot ask the same question twice.

Mr. Oliensis: I'm not sure what your Honor has in mind, but if there is one lead counsel with responsibility in this area and one lead counsel with responsibility in another area, I would assume that the second examination would not simply be permitted to ask questions that the first had not asked.

The Court: I don't see why you assume that. That's precisely what happens in every criminal case where there are conflicting interests. Cross-examining counsel, after the first cross-examiner, doesn't get a chance to go over the same ground just because he has a different client.

Mr. Oliensis: If it please the Court, I am reasonably sure, and I hate to look at a crystal ball, but if there are two separate complaints, same set of facts, two separate counsel, it will prolong the depositions far beyond what would take place if you had a single complaint with allegations of sub-matters among various counsel.

The Court: I could take care of any prolonged examinations in short order. All you have to do is let me know that somebody is prolonging an examination and in ten minutes I will have stopped it.

Mr. Oliensis: I would like to respond to one thing that Mr. Wechsler said:

Clearly there is nothing inconsistent, and I speak from a defendant's standpoint, in having these defendants altogether in one action. That's what the SEC did. If we do address ourselves to practicals, I think without exception all of these complaints are written based on the SEC complaint. What they have done is pick this slug and that slug. What they have done is to break down one complaint into 12 different complaints.

What would make sense is to make them one complaint again. I am unable to see how there could be a time saving or how things could be moved more expeditiously or effective if what is essential in one complaint is broken into two. I can envisage risks and possibilities, waste, time, effort, and considerable delay, or, from a defendant's standpoint, which we would like to avoid.

I have been the only one of the defendants, of course, who is in most of these litigations, to speak.

The Court: I am trying to hear everything.

The thing that seems to me very clear, I think it was highlighted by what Mr. Baron had to say and what Mr. Ayers had to say. All the defendants may not be necessarily affected by all claims, and I think that if a defendant is a defendant in one case and not in another case, you are imposing a burden on that defendant to deal with a consolidated complaint concerning a lot of matter he is not interested in.

Mr. Oliensis: If it please the Court, I think that's the clearest possible example of why two complaints would not be serviceable. There are some of these defendants who are in only two actions and yet the two actions they happen to be in, one is on behalf of Realty and one is on behalf of Republic stockholders, so the result is that these peripheral defendants would be going full speed in two different litigations, even though the charges made in both are identical.

The Court: Then we come to the last point. I don't think I have the power to prevent litigant A from litigating his claim by forcing him into another person's action. I think I do have the power to compel consolidation of proceedings but not consolidation of actions in the sense of telling somebody, "Your claim really belongs in somebody else's action," and vice versa.

Transcript of Hearing, June 12, 1974

Mr. Oliensis: If it please the Court, I think that falls well within the plenary powers. We would be glad to brief the point. There is nothing inconsistent in having Realty and Republic stockholders suing in the same time period and the same litigation other than having the Realty stockholders and bondholders in the same litigation.

Mr. Wechsler: One of the problems here is that the classes are not really suing on the basis of the same facts in a sense that a single transaction might have caused different misrepresentations and different financial statements submitted to different people. Those financial statements, single transactions, might make each statement misleading. The statement submitted to Republic shareholders might be misleading and the same in Realty might not have been materially misleading. I think there are significant differences.

The Court: How many Realty cases are there?

Mr. Oliensis: I think it is six and six.

The Court: Let's put that point aside and we will hear from other attorneys, counsel, for a moment.

Mr. Hegarty: Very briefly, my name is William Hegarty. I wish to join in the position stated by Mr. Oliensis: It seems to me we are dealing, I take it, with an effort to arrive at an order of consolidation on consent without regard to the limits or lack of them under your Honor's power to bring things together in an effort—

The Court: More importantly, we are trying to arrive at an order that is not unfair.

Mr. Hegarty: Exactly.

My client, in contrast to Standard & Poor's but like Republic, finds itself a defendant in most of the actions, sued by two or three different classes of people, bondholders of one company and stockholders of the same company and

stockholders of another company with respect obviously to precisely the same conduct on the part of my client.

It is therefore very much to our advantage to avoid du plication if they can be brought together in one rational and simplified action with the rights of all the plaintiffs preserved by separate counts, separate descriptions, classes, and the like.

I think also, your Honor, there is a practical problem inherent in the division that is proposed, and that is this: We have a geographical focus concerning Republic which is Texas. We have a geographical focus—I am simplifying, of course—concerning Realty, which is New York. I assume that different parties before the panel, as to where some or all the actions should or should not develop, my clients take no position on that. Our position simply has been we don't want to be in more than one district at once if we can avoid it. The bifurcation here between two complaints, I think, points somewhat in the direction of that for us of litigation involving the same facts conducted in two different districts by two different lead counsel, granted, of course, the Court control unwise and unnecessary duplication.

I think there will be a natural tendency and temptation in that regard. For that reason I wish to endorse Mr. Oliensis's position.

Mr. Rezneck: Your Honor, my name is Daniel Rezneck representing Westheimer, Fine, Berger & Co.

I think we would be one of the peripheral defendants Mr. Oliensis referred to in that we are defendants in less than half the cases and are charged on less than all the counts in these cases. Nevertheless, we do strongly prefer a single consolidated complaint. I think it would make it much simpler, from our standpoint, to have to deal with

one case rather than two complaints. I think it would be a great savings in time, paperwork, and energy on our part, and I think on the other parties as well.

I would like to bring one other consideration to your attention, and that is that I think if you have two complaints you will also get a proliferation of pleadings as well. I foresee that you are going to get cross claims in each case, cross claims perhaps for indemnification and so on; by virtue of having two complaints you are going to have a series of third party complaints because I think if not all the parties are defendants in each case you are going to get parties defendant in one case attempting to bring in parties defendant from the other case; thus, you are going to get the two cases, I think, brought back together again as a practical matter. There is going to be an enmeshing, I think, and I would suggest it would be simple to deal with it as a single consolidated case from the beginning, because then everyone can deal with that on the defense side by means of a cross claim. The Court can enter an order saying that every party will be deemed to have interposed claims for indemnification. You will avoid paperwork by starting out with one complaint.

The Court: In what case was that done? Send me the citation of that.

Mr. Rezneck: I will furnish it.

Judge Parker there entered an order in order to avoid proliferation and pleadings that every defendant would be deemed to enter cross claims for indemnification and contribution in the private action.

The Court: Do you have a copy of that order?

Mr. Rezneck: I can send it to you.

That's all I have.

Mr. Hawkins: My name is James Hawkins and I am with Shearman & Sterling. I represent the defendants

Alexander Grant & Company and Klein, Hines & Fink [sic]. They were at one time auditors for Realty Equities Corporation.

My clients are named in but two actions, the Katz action and the Herman action, 74 Civ. 1137 and 74 Civ. 1248.

We are named in but one count of each of those complaints.

We would object to a physical merger of all of these cases into a single action. We strongly recommend and urge consolidated discovery.

I, personally, have been involved in six multi-district proceedings where there has been no single or two consolidated complaints filed but, rather, the complaints were transferred to the transferee district, the actions remained, had their separated identities, but the Court continued to control discovery and had a single set of discovery, a single document production; the plaintiffs' counsel was directed to get together and to request the same documents or to come up with one request for documents, the same on depositions; there was a single set of depositions where lead counsel for plaintiffs initially conducted his discovery and then additional counsel conducted any further discovery they thought appropriate.

Your Honor began this situation by saying that we were looking for consolidation for pretrial purposes only. It seems to me that if we consolidate the complaint under Rule 42, what we are doing is consolidating for the purposes of trial. I think we are a long way from trial, and I think to have this physical consolidation merger is inappropriate before we know we are down the road far enough to know what we are faced with.

The Court: I don't understand your point, Mr. Hawkins. If you are a defendant in one particular claim as to one

particular corporate entity, a consolidated pleadings, even as a single pleading, will state, for example, sixth count stated against Alexander Grant and Klein, Hines & Fink [sic], or sixth count against Grant, seventh count against Klein, Hines & Fink [sic]—what is confusing about that?

You see, when you have one single set of papers as contrasted with the comparative procedure that you have indicated occurs in other courts, you don't impose upon a judge or other parties the obligation to see what is lurking within the framework of each set of semantics. It seems to me that you would want to be brought out to front and center and say, "This is the claim against me and I don't have to go searching around in the interstices of all these other complaints to find out if I am being challenged or charged."

I think that your point should wind up with a different conclusion. If you want to know specifically what you are charged with, the best way to find out is to make everybody zero in on you in one instance and not in 12 or 14.

Mr. Hawkins: I think we are quite aware in the complaints that have been served and filed in this court as to precisely what counts we are involved in and what counts are charged against us, and I don't beg to differ with your Honor, but I don't think the consolidated complaint is going to make that clearer to us.

Secondly, I think there are factual distinctions in the claims and in the classes that are being asserted which should not be merged; for example, there is no derivative count against us, our client. Those should not be merged into a single count which would bring in our client. There are no claims by bondholders—

The Court: Why would they be merged against your client. They are not merged against your client. Derivative allegations of complaint will say, count 2, derivative

claim asserted against X, Y, Z. You are not named there. You don't answer it. Ignore it. That's the way you handle it. I have done it maybe 50 times or 100 times myself, long before I got to the court, and the defendants were very thankful that they were not facing 14 lawyers with semantics that varied 14 times to obscure the fact that there were 13 pockets.

Mr. Hawkins: It seems to me, your Honor, that the complaints have already been served and the parties are well aware of the allegations that are in those complaints. The serving of a consolidated complaint at this time is not going to assist that.

For purposes of discovery, I agree wholeheartedly, the consolidated discovery in this case is absolutely essential. I don't object to that at all. I think that we are getting into the situation where we are presuming there is going to be a merged trial because we are consolidated and consolidating takes place under Rule 42, a consolidation for hearings on trial.

The Court: Let me say this: While I have not said there will be a merged trial, I think that there are sufficient indications now to indicate that there will be a merged trial unless that seems unfair as a result of the pretrial proceedings. It just doesn't make much sense to try 12 different, or 14 different, cases 14 different times when there is only one point.

Mr. Hawkins: I understand that point with respect to most of the defendants.

There is one other point I would like to make, your Honor. Our clients believe they have a very substantial right to dismiss. We have refrained from filing that motion today. I understand that certain other defendants are going to file motions. I want to make sure that we

either get in step, or at least in step with your Honor's schedule, as to the filing of these motions, whether you think it is more appropriate after the decision on consolidation, whether you think it is more appropriate before the decision on consolidation.

The Court: I cannot tell you whether the situations are akin to that of the defendant publications. The defendant publications have claimed that the charge against them is so extreme as a matter of substantive law that they ought not to be subjected even to the necessity of facing the consolidation and, therefore, they would like to be heard currently, and I agree with that. They ought to be heard currently to find out what there is to hold publications in circumstances like this.

When it comes to accountants in a case where the accountant himself is charged as suspect, the category of the accountants, either past and terminated, or past and present, may not give such a sharply defined basis for prompt action as in the case of publications and therefore does not indicate any essential prejudice in waiting until you get the consolidated amended complaint.

So unless you think that there is something extraordinarily unfair in waiting to see what the charges are leveled against your client in the consolidated amended complaint, I would suggest you hold your motions, because the motions are not going to be entertained merely for purposes of ferreting out what the claim is all about.

Mr. Hawkins: I understand that, your Honor.

Very succinctly, what the fact situation is, our client for the year ended March 30, 1970, disclaimed an opinion with respect to the Realty Equities financial statement. Thereafter it was terminated. The financial statement disclosed the transactions which had occurred between Realty Equi-

ties and Republic National. The substantive transactions, which are the bases of the SEC complaint and the private actions, occurred after our disclaimer and after our resignation or termination.

The Court: Bring on your motion.

Mr Hawkins: Now?

The Court: Now. I don't mean this afternoon. I have not got the time today but you can do it tomorrow.

The others will be asserting their objections to the complaint on the 17th of June, and if you want to you can bring on your motion for that time and I will hear any objections on the part of opposing counsel. This will be a short opportunity to deal with your particular case, and I would doubt very much that they will get much of a continuance from me, but they may have a point that I might want to consider.

If that is all there is as to what the claim is against you, it would seem to me that the opposing side could get ready quicker; and if they cannot, we will give them time.

Mr. Kaye: My name is Richard Kaye. I am from the firm of Tenzer, Greenblatt, Fallen & Kaplan. My office represents the defendant Hilary H. Evers.

The Court: What case is that?

Mr. Kaye: Katz and Herman as well as the SEC action.

We are named in only one count in each of those complaints, your Honor, and I would like an opportunity—

The Court: What is the charge?

Mr. Kaye: The facts are very simple as to our client. It is alleged that in December of 1971 our client arranged with Realty Equities to obtain four appraisals, to obtain an appraiser who would, in turn, actually make the appraisals and submit them to Realty.

Our client, in fact, retained the services of one Phelim O'Toole, who was also a named defendant, who, in fact,

prepared four appraisals which were given to our client, Evers, who, in turn, delivered them to Realty and got paid his fee.

It is then claimed that the appraisals were "inflated and fraudulent."

The Court: You better wait until the consolidated complaint comes in.

Is there any other defendant that wants to talk?

Mr. Gregory: My name is Raymond F. Gregory and I represent Realty Equities Corporation of New York.

I support Mr. Oliensis and Mr. Hegarty in their motion. I adopt their statements and I would like to add one thing:

The plaintiffs almost universally have alleged Realty Equities is in dire financial straits. I think it is a matter of public record that Realty has seen better days. I am very much concerned for my client that there be no duplication or additional efforts here that would add to the cost of defending the case; therefore I believe the single consolidated complaint would eliminate that possibility.

The Court: Is there any other defendant's counsel?

Mr. Oliensis, did you say that there is precedent for a single complaint under these circumstances?

Mr. Oliensis: I believe so, and I base that simply on my reading of the rules. We will certainly brief that for your Honor and provide your Honor with our conclusions.

The Court: It seems to me that the use of a single consolidated complaint need not necessarily foreclose the use of individual complaints at a trial, and in the same way as consolidated discovery would be useful and efficient, a single consolidated complaint during the discovery and pretrial period would be useful and efficient and could be without prejudice to unfurling the separate flags at trial, if necessary, to protect any legitimate interests that may have to be dealt with separately.

Transcript of Hearing, June 12, 1974

I confess, it is a suggestion that I have not seen worked out in the past and I know no warrant for it in the precise language of the rule other than the broad discretion that the Court has to conduct the pretrial proceedings efficiently during the pretrial.

The matter of the service of papers and lead counsel can be adequately cared for within that framework because that would then be a distribution only of parts of the play and not necessarily trampling on the rights of anyone because the representatives espousing particular aspects of the case would be independent of representatives espousing other aspects of the case and there would be no disqualifying merger.

I think I am going to try it. I will order a single consolidated complaint for pretrial purposes without prejudice, as I say, to whether or not there will be a consolidated trial and without prejudice to the use of the individual complaints as they stand now at a consolidated trial, and certainly without prejudice to their use in individual trials if that should eventuate.

I will designate lead counsel to serve during efficient performance for the clearly separate aspects of the claims which I think are three, so far as I have presently been advised:

One is in relation to the Realty Equities' side.

One is in relation to the Republic Life side.

And the third one is in relation to the interest of the bondholders, who seem to have interests to be conserved separately from those of stockholders.

My order will be without prejudice to any application on the part of the defendants for a transfer pursuant to 28 U.S.C. 1404(a) of these suits to another district, and without prejudice, of course, to any action of the multi-district panel, and be not binding on any other district judge who

may have cases that are not before this Court that will include a stay of all present and former securityholders of the two corporations basically involved here, a stay commencing or continuing any derivative or representative actions, suits, or proceedings in this court, the United States District Court for the Southern District of New York, with respect to those two corporate entities and their interests or the interests of securityholders already represented in the proceedings.

Meanwhile, and before the consolidated amended complaint is drawn, I will consider the objections to the actions by the defendant publications represented by Mr. Baron and Mr. Ayers and will consider the stipulation in respect to the defendant Homer Chapin and endeavor to make a determination which will indicate whether those defendants respectively are to be continued in the consolidated proceedings or are to be dismissed as a matter of law at this stage.

Promptly following those dispositions, the preparation and service of the consolidated amended complaint can take place, answers can be interposed, and I will then regulate the procedure with respect to discovery so nobody need attempt to race anybody else for the privilege thereof, because we will have a discovery program conference at which we can ventilate the mutual desires of the respective parties and organize a rational basis for proceeding without undue haste and with due celerity.

I think that it will useful to provide for the receipt and service of all papers in such a matter so that the dissimilar interests, if, indeed, they be dissimilar, that I have mentioned above, whether they are in two or three categories, will find that there is a central repository for sets of papers in two or three places. That would mean that the defen-

dants would be required to serve two or three copies of their papers and the plaintiffs would be required to serve papers relative to particular defendants on the counsel representing those defendants with the right of any defendant's counsel to obtain the papers should they so desire merely by calling on the lawyers for the plaintiff to furnish a copy.

If there is some way that could be devised to have lead defendants' counsel, I would suggest that that be employed, because it gets messy to have lots of papers of a duplicate nature for the very reasons that Mr. Oliensis and Mr. Hegarty mentioned. It becomes much clearer if the paperwork is reduced and confined. I will leave it to somebody to head up a meeting of defendants' counsel to determine whether that is feasible, and to let me know whether anything of that character should be put into the order itself.

I take it that somebody will be obtaining a set of these minutes, and when I obtain my copy of them I will review them and prepare the requisite order which I will enter accordingly.

I have not, Mr. Nickerson, yet decided whether you are in or out of this case because I have grave misgivings on the subject as to whether or not you are related, that is, your case is related, to what these lawyers are talking about and defending on.

I will say this for your guidance: The coordinating clerk of this district sent out a copy of your complaint to the multi-district panel for consideration as to whether you should be included in this multi-district order. I have not done anything about it, one way or the other, to influence the multi-district panel or to register my beliefs or disbeliefs with them. I don't know whether you are before Judge Griesa or whether you are before me, but I see no hurry to decide that and, certainly, I would not consider

deciding it until after the multi-district panel does something about it.

The multi-district panel may decide that this is really all one pot that is being stirred and it is just portions of it that pertain to particular parties. If they do, then that's that.

So the probabilities are that your case will not be referred to in the initial order, but should it develop that you should be included as part of the party here under the same circumstances, I will simply enter an order saying that anything in this particular order shall apply to the security case, and that will cover you.

Mr. Nickerson: Your Honor, may I ask a question?

I think it is implicit in what you said before going back to the consolidated complaint: I take it the defendants need only answer the consolidated complaint even though the others may be kept alive for purposes of trial?

The Court: That's right. I see no point for multiplying the pleadings. By the time of the trial the defendants may have some new ideas as to what defenses they wish to assert, and under the so-called enlightened procedure of amending the pleadings in the last pretrial order, we will assume at that time that they will have the opportunity to amend, to submit amended answers for the trial purposes. In other words, it should not become a game. If somebody has a good defense that he thinks of in a year from now, unless somebody has been disadvantaged by the lapse of time, I see no reason why that person should not be in a position to come forth with the right idea then.

Mr. Weitz: My name is Theodore Weitz from Winthrop, Stimson, Putnam & Robert. We are counsel for

Irving Trust Company, defendants only in the bondholders case, 1192.

It is my understanding of your order of May 1st and present order, all discovery has been stayed, your Honor, and the various actions pending consolidated complaint. We were recently served with a Rule 23 class action motion returnable on its face on July 9th, presumably before any discovery would be allowed, and we would like to prepare our answering papers on this particular point.

The Court: For everybody's guidance, the time within which to comply with Rule 11(a) of the Local District Rules, the making of a class action motion, will be deemed not to have begun to run until the consolidated amended complaint has been served. That will be deemed to be the effective inception of the 60-day period, and anybody who has jumped the gun and given notice that he wants a class designation will be considered as having alerted me to something that he is going to assert thereafter and which will have no coercive effect on any defendant in the event that it becomes useful and appropriate to have discovery in relation to the propriety of a class action motion that will be ruled on at the time when we get around to taking up the class questions. My practice has been to allow parties to discover facts relative to whether or not a class suit is appropriate and what classes are appropriate, for your general guidance.

Mr. Oliensis: I would like to ask one question: At the hearing on June 17 will there be other matters to require the attendance—

The Court: No. The only matters that are scheduled for this month are the two motions by the two publications, and then, in the government's case, the SEC case, there is a motion later on.

Mr. Oliensis: Argument on that will be held on the 27th?

The Court: Right.

Mr. Oliensis: One other statement for the record: Arthur Christy of Christy, Frey & Christy, which represents the defendant Pickens did not receive a copy of the paper advising him of the meeting here today and learned about it too late to attend and wanted that noted.

Mr. Hegarty: As a small scheduling point on the second motion for the 27th, it is scheduled for 2 o'clock in the afternoon. The panel motion is the following morning in San Francisco at 9:30. I was wondering if your Honor's schedule would permit an earlier argument. I don't know how long the argument will go. It may be relative short. It will facilitate travelling to San Francisco.

The Court: Off the record.

(Discussion off the record.)

Mr. Sands: I am the attorney for the plaintiff in Katz v. Realty.

Your Honor, in the first pretrial order your Honor had set a hearing on the private suits Monday, June 17, 2:00 p.m. Mr. Wechsler and I have been asked by members of plaintiffs whether that will still be necessary.

The Court: No.

Mr. Sands: The second item, I would like to obtain a copy of today's transcript to transmit to the multi-district panel.

Third, I have taken the liberty of writing to your Honor's chambers concerning the documents filed by the SEC. I spoke to Mr. Sporkin in Washington who informed me that the only set is in your Honor's hands. Mr. Sporkin has not been able to have a duplicate set sent to the SEC across the street.

We would like to obtain the 17 transcripts and 65 exhibits for duplication. I would ask of your Honor that you permit us to borrow those, have them duplicated professionally, and return them to your Honor. They cannot be duplicated on the court house Xerox machine.

The Court: We can make no arrangements. While the motion of the SEC is pending, considering its massive size, I can only work at it from time to time and you may be borrowing it at the very time when I have a spare moment. There are several things going on in my chambers at the present time. I would prefer to make them available after this motion has been disposed of rather than find myself without them. There are many things that come up during the course of the day where I want to refer to something or other in those papers, and if they are not at hand, because they happen to be temporarily out, I may lose the opportunity for days thereafter.

Mr. Sands: I undersand that, your Honor.

The Court: What is the great rush?

Mr. Sands: Solely that there may be probably some information there which would be of assistance to us in our presentation to the panel, and the panel is meeting on the 28th of June. We would, of course, like to get the papers for the judges of the panel immediately.

Your Honor's convenience, in this particular situation, of course, has to take precedence.

The Court: I cannot see [illegible] se papers could be conceivably of assistance to [illegible]district panel. That is not what guides their intentions. They are not interested in details of evidence.

Mr. Sands: Location transactions particularly and the type of documents that were in existence concerning the transactions.

The Court: Tell them what you know instead of what somebody else knows that you don't know. See what develops from that. You are not going to be prejudiced in my judgment by the lack of copies of what the SEC has been doing.

I did arrange for somebody to come and inspect those papers in my chambers. You were told about that, weren't you?

Mr. Sands: No.

The Court: Somebody wrote me a letter. Was it Mr. Wechsler?

Mr. Sands: I wrote the letter to your Honor. I was going to call your Honor but being here I thought I would ask directly.

The Court: It seems to me I put a note on your letter to my secretary which very curtly said, "Tell him to come in and look if the SEC has no objection."

Mr. Sands: I will call Mr. Sporkin in the morning.

The Court: It is up to them. They are their papers. Prior to the time their motion is heard are they to be considered generally available? They may be docketed papers but they are not yet filed for public purposes. The motion has not been heard. What you would be asking for would be the equivalent of the privilege of going down to the SEC and having them give you your copies. The mere fact that they are delivered to me has not published them.

Mr. Sands: Mr. Sporkin was very cooperative. He was attempting to get another set of papers to New York, but, mechanically, he has not been able to work it out.

The Court: You tell him to write me a letter that he has no object to your examination of the SEC files knowing that I have said that they are not yet public property and won't be public property unless and until the motion is heard.

Mr. Sands: Thank you.

Mr. Hawkins: Your Honor, when you went over the schedule for this month you did not mention my client's motion to dismiss. I was wondering whether you had reconsidered.

The Court: I did mention it. I said, I think, you better present your motion against the consolidated amended complaint.

Mr. Hawkins: Yes, sir.

The Court: I think what you are raising will involve other considerations than the very narrow one.

Incidentally, if after discussing the liability of publications the plaintiffs' lead counsel and the plaintiffs' direct counsel, who have asserted claims against the publications, come to the conclusion that there is not anything for me to do, they can write a simple stipulation to that effect and I will so order it; otherwise, if there is a legal point to be solved, I will hear it. That's a matter of getting into communication with each other.

Is there anything else?

(Pause.)

The Court: Gentlemen, that will terminate the proceedings.

(Time noted: 5:45 p.m.)

Order of Consolidation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN RE

REPUBLIC NATIONAL LIFE INSURANCE COMPANY[1]

and

REALTY EQUITIES CORPORATION OF NEW YORK,[2] *et al*

Docket Nos.

74 Civ. 1115	74 Civ. 1294
74 Civ. 1137	74 Civ. 1622
74 Civ. 1192	74 Civ. 1668
74 Civ. 1225	74 Civ. 1846
74 Civ. 1248	74 Civ. 1875
74 Civ. 1255	74 Civ. 1942

The Court having held hearings to determine the most efficient manner in which to conduct these related litigations and having received certain stipulations and heard counsel for all parties desiring to be heard and being fully advised in the premises, it is, in the exercise of the Court's discretion and subject to any order to be made in pursuance of 28 U.S.C. §1407 by the Multi-District Panel,

ORDERED:

(1) The above designated actions (sometimes herein "constituent actions") are hereby consolidated for all pretrial purposes to be had during the pendency of these

1. Referred to in this order as "Republic".
2. Referred to in this order as "Realty Equities".

actions in this District in accordance with the following terms which the Court in the exercise of discretion makes applicable to foster the efficient and proper conduct of the claims asserted in the individual complaints in the said actions.

(2) A single consolidated complaint, supplemented and amended, shall be prepared and served herein by liaison counsel which shall set forth the claims for relief asserted in the constituent actions, collated into separately stated counts by class and derivative categories as to each kind of security holders and at the head of each count shall specifically designate by name or other convenient reference the defendants against whom such count is asserted.

(3) No defendant in the constituent actions shall be required to plead to the individual complaints heretofore served unless and until further order of the Court.

(4) During efficient performance and subject to further order of the Court in respect thereto, *Stuart Wechsler, Esq.* is hereby designated to serve as liaison counsel for plaintiffs in the constituent actions and as lead counsel for stockholders-plaintiffs of Republic; and *Ira Jay Sands, Esq.* is hereby designated as lead counsel for stockholders-plaintiffs of Realty Equities and of First National Realty and Construction Corp.; and *Sheldon P. Barr, Esq.* is hereby designated as lead counsel for debenture holders plaintiffs of Realty Equities.

(5) Liaison counsel shall perform and have the following duties and powers:

> (a) To serve upon or receive from defendants all legal or other papers, notices, and motions herein and to promptly notify lead counsel thereof and upon

written request to supply lead counsel with copies thereof;

(b) To maintain in his office and keep open for inspection and copying during regular business hours by the other plaintiffs' counsel, all papers, etc., referred to in "a";

(c) To act as spokesman for plaintiffs at pretrial conferences subject to the right of counsel for each party to present individual or divergent positions where necessary;

(d) To convene meetings of counsel herein in respect to policy and procedure on matters pertaining to the constituent cases;

(e) To initiate and in the first instance conduct all discovery, motions and other actions relating to pretrial proceedings on behalf of plaintiffs; provided however that the preparation of claims for inclusion in pleadings and of other papers, etc., and the suggestion to liaison counsel of proceedings shall be by the respective lead counsel for the interests for which they are to act which pleadings and papers shall be furnished to liaison counsel for service upon defendants; and such lead counsel shall conduct, if they so desire, non-duplicatory questioning on oral depositions upon completion of liaison counsel's examination and shall handle motions in respect to the interests for which they are to act;

(f) To enter into settlement negotiations by and with the presence and cooperation of lead counsel;

(g) To perform such other functions as may be consistent with the foregoing or authorized by the Court.

(6) Lead counsel shall keep the plaintiffs for whom they are designated to act currently informed on all significant matters undertaken or of which they become aware and shall perform such other functions as may be consistent with the foregoing or authorized by the Court.

(7) Counsel for the respective plaintiffs shall have the right to participate in the pretrial proceedings herein, in subordination to liaison and lead counsel but shall not independently initiate any proceedings other than to call them to the attention of liaison counsel. Any controversy in respect thereto shall be promptly referred to the Court for resolution.

(8) The consolidation hereby ordered shall be without prejudice to any proceedings heretofore had in any of the constituent actions.

(9) The answer of each defendant to the consolidated complaint (or latest amended complaint) in each of the above-captioned actions shall be deemed to assert cross-claims against all the other defendants therein for such sharing of liability in the nature of contribution and indemnification as exists under the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*) and the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*) as well as by state statutory and common law, except insofar as any defendant shall in his answer decline to assert such claims against any other defendant; such claims to be deemed asserted in the following form:

FIRST CROSS-CLAIM AGAINST
ALL OTHER DEFENDANTS

If plaintiffs recover judgment against the cross-claiming defendant, the cross-claiming defendant is, or may be, entitled to contribution under the Securi-

ties Act of 1933 (15 U.S.C. § 77(a) *et seq.*) and the Securities Exchange Act of 1934 (15 U.S.C. §78(a) *et seq.*) from some or all of the defendants other than the cross-claiming defendant.

SECOND CROSS-CLAIM AGAINST ALL OTHER DEFENDANTS

If plaintiffs herein recover judgment against the cross-claiming defendant by reason of any of the acts, transactions or omissions alleged in the amended complaint, such judgment will have been brought about and caused wholly or primarily by the acts, transactions, commissions or omissions of some or all of the defendants and not by, or only secondarily by, any acts, transactions or omissions of the cross-claiming defendant.

By reason of the foregoing, the cross-claiming defendant is, or may be, entitled to indemnification or contribution for all or part of any such judgment recovered by plaintiffs herein.

and each defendant against whom such cross-claims have been asserted shall be deemed to have interposed answers to said cross-claims controverting the allegations contained therein and denying any liability in the nature of contribution or indemnification.

All cross-claims asserting claims other than for shared liability as hereinbefore described remain unaffected by the foregoing provisions of this order.

(10) This order shall be without prejudice to any application on the part of the defendants herein for a transfer pursuant to 28 U.S.C. §1404(a) of these suits to the District Court in Texas, Dallas Division, and in the

event of any such transfer all proceedings herein prior thereto shall be deemed to have been without prejudice to the right of the Judge presiding in transferee District proceedings to establish any orders for the conduct of these litigations whether or not consistent with the terms of this order.

(11) At the conclusion of the pretrial proceedings, the Court will give consideration to a consolidated trial of the issues herein.

(12) Until the final determination of the consolidated proceedings herein and any consolidated trial all present and former security holders of Realty Equities and of Republic shall be and are hereby stayed from commencing or continuing any derivative or representative actions, suits or proceedings in this Court, the United States District Court for the Southern District of New York, with respect to Realty Equities and of Republic and its security holders against any defendants named herein and from proceedings with any such actions, suits or proceedings commenced on and after the date hereof, based upon any of the transactions complained of in the respective complaints and in the consolidated complaint herein, and the service of a copy of this order upon the attorneys for such other security holders in any action other than these consolidated actions, shall be sufficient notice of this stay.

(13) Lead counsel shall move within sixty (60) days after service of the consolidated complaint provided for herein for class action determination under Fed. R. Civ. P. Rule 23.

(14) Each of the plaintiffs in the action herein shall bear its proportionate share of all costs, expenses and disbursements hereinafter incurred by liaison and lead counsel in the pretrial proceedings.

/s/ MILTON POLLACK

Milton Pollack
U. S. District Judge

June 24, 1974

Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1137-MP

GEORGE KATZ,

Plaintiff,

against

REALTY EQUITIES CORPORATION OF NEW YORK, et al.,

Defendants.

PLEASE TAKE NOTICE that Alexander Grant & Company and Klein, Hinds & Finke, defendants in the above-captioned action hereby appeal to the United States Court of Appeals for the Second Circuit from paragraphs (1) and (2) of the Order of Consolidation, entered in this action on the 24th day of June, 1974.

Dated: New York, New York
July 24, 1974.

SHEARMAN & STERLING
By /s/ W. FOSTER WOLLEN

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Notice of Appeal

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Notice of Appeal

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Notice of Appeal

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Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1248-MP

KENNETH I. HERMAN, Trustee F/B/O SHERIL ESTA KUPFER,
Plaintiff,

against

REPUBLIC NATIONAL LIFE INSURANCE COMPANY, et al.,
Defendants.

PLEASE TAKE NOTICE that Alexander Grant & Company and Klein, Hinds & Finke, defendants in the above-captioned action hereby appeal to the United States Court of Appeals for the Second Circuit from paragraphs (1) and (2) of the Order of Consolidation, entered in this action on the 24th day of June, 1974.

Dated: New York, New York
July 24, 1974.

SHEARMAN & STERLING
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Notice of Appeal

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Stipulation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1137 M.P.

GEORGE KATZ,

Plaintiff,

against

REALTY EQUITIES CORPORATION OF NEW YORK *et al.*,

Defendants.

74 Civ. 1248 M.P.

KENNETH I. HERMAN, Trustee F/B/O

SHERIL ESTA KUPFER,

Plaintiff,

against

REPUBLIC NATIONAL LIFE INSURANCE COMPANY *et al.*,

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between liaison counsel for plaintiffs and counsel for defendants Alexander Grant & Company ("Grant") and Klein, Hinds & Finke ("KHF") that the Amended Consolidated Complaint and the Transcript of Hearing before the Honorable Milton Pollack of September 12, 1974, copies of which are annexed hereto, are documents related to these cases, are necessary to an adjudication of the appeal herein which

Stipulation

has been noticed by defendants Grant and KHF and are deemed to be part of the record on appeal in this case.

Dated: New York, New York
October 31, 1974

KASS, GOODKIND, WECHSLER & GERSTEIN

By /s/ STUART D. WECHSLER
A Member of the Firm
Liaison Counsel for Plaintiffs
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SHEARMAN & STERLING

By /s/ W. FOSTER WOLLEN
A Member of the Firm
Attorneys for Defendants
Alexander Grant & Company
and Klein, Hinds & Finke
53 Wall Street
New York, New York 10005

Amended Consolidated Complaint

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1115 M.P.

IN RE REPUBLIC NATIONAL LIFE INSURANCE COMPANY

and

REALTY EQUITIES CORPORATION OF NEW YORK, *et al.*,

Docket Nos.

74 Civ. 1115	74 Civ. 1846
74 Civ. 1137	74 Civ. 1875
74 Civ. 1192	74 Civ. 1942
74 Civ. 1225	74 Civ. 3781
74 Civ. 1248	74 Civ. 3782
74 Civ. 1255	74 Civ. 3783
74 Civ. 1294	74 Civ. 3784
74 Civ. 1622	74 Civ. 3785
74 Civ. 1668	

Plaintiffs, upon information and belief allege:

JURISDICTION AND VENUE

1. This action arises under: (a) Sections 10(b), 13, 14, 18 and 20(a) of the Securities Exchange Act of 1934, as amended, (the "Act"); (b) the Rules and Regulations promulgated thereunder, including Rules 10b-5 and 13a-1 and Regulation 14a-9; (c) Section 17(a) of the Securities Act of 1933, as amended, (the "Securities Act"); (d) the

Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"); and (e) the principles of common law.

2. This Court's jurisdiction is based upon Section 22(a) of the Securities Act, Section 27 of the Act, Section 22 of the Trust Indenture Act and pendent jurisdiction.

3. The acts and transactions underlying the claims alleged herein have occurred within the jurisdiction of the United States District Court for the Southern District of New York and elsewhere.

PLAINTIFFS AND CLASS ACTION ALLEGATIONS

4. Plaintiffs bring this action on their own behalf and in a representative capacity on behalf of all of the persons similarly situated. The plaintiffs and the classes of persons they represent are as follows:

(a) Plaintiffs, Norman Miller, Sy C. Sussman, Ruth L. Sussman, Kenneth I. Herman, as trustee of Sheril Esta Kupfer, Milton Friedman, Robert Friedman, Milton Friedman as custodian for Keith Friedman, and Joseph L. Massie represent the class consisting of all persons who purchased securities of Republic National Life Insurance Company ("Republic") from September 1, 1970 through March 8, 1974 and who sustained a loss in consequence thereof (the "Republic Class"). Plaintiffs Sussman bring their Complaint against only those defendants named in the related action designated as 74 Civ. 1225.

(i) These plaintiffs are members of the Republic Class in that their claims are typical of the claims of the proposed class members and they can fairly and adequately protect the interests of the class.

(ii) There were many thousands of persons who were beneficial owners of the securities of Republic between the dates set forth above.

(iii) The members of the class are scattered throughout the United States and are so numerous as to make it impractical to bring them all before the Court.

(iv) The claims of the class involve common questions of both law and fact. Questions of fact include whether the defendants participated in a scheme to falsify the financial statements of Republic so that Republic might avoid a write down of its substantial investment in Realty Equities Corporation of New York ("Realty"). The questions of law common to the class are whether the acts alleged herein constitute violations of the Act, the Securities Act and the Rules and Regulations promulgated thereunder.

(v) The questions of law and fact common to the members of the class predominate over any questions affecting individual members.

(vi) A class action is superior to other available methods for a fair and efficient adjudication of the controversy between this class and the defendants.

(b) Plaintiffs George Katz, Bernard Chesner, Samuel Tisser and Newton Gottlieb, as Trustee for William Gottlieb, are members of the class consisting of all persons who purchased securities of Realty from on or about September 1, 1970 through on or about March 8, 1974, and who sustained a loss in consequence thereof (the "Realty Class").

(i) These plaintiffs are members of the Realty Class, their claims are typical of the claims of the proposed class members and they can fairly and adequately protect the interests of the class.

(ii) There were many persons who were beneficial owners of the securities of Realty between the dates set forth above.

(iii) The members of the class are scattered throughout the United States and are so numerous that joinder is impractical.

(iv) The claims of the class involve common questions of both law and fact. The questions of fact include whether the defendants participated in a scheme to falsify the financial statements of Realty and whether the price of Realty stock was artificially inflated thereby. The questions of law common to the class are whether the acts alleged herein constitute violations of the Act, the Securities Act and the Rules and Regulations promulgated thereunder.

(v) The questions of law and fact common to the members of the class predominate over any questions affecting individual members.

(c) Plaintiff Kenneth Rubenstein ("Rubenstein") represents the class consisting of all persons who held shares of Pacific National Life Assurance Company ("Pacific") at the time of the issuance of a Notice of Meeting and Proxy dated December 10, 1970 (the "Pacific Proxy Statement") and who, as a result of Pacific's merger acquired shares of Republic (the "Pacific Class").

(i) Rubenstein is a member of the Pacific Class: his claims are typical of the claims of the proposed

class members and he can fairly and adequately protect the interests of the class.

(ii) The members of the class are so numerous that joinder of all of them is impractical in that the Pacific Class consists of more than 2,000 persons.

(iii) Common questions of law and fact are involved in this action. The common questions of fact include whether the Pacific Proxy Statement, which included financial statements of Republic for the fiscal year ended December 31, 1969, which were supplied to Pacific by Republic, was false and misleading in failing to adequately describe the nature and status of Republic's investment in Realty, the nature of the income reported by Republic and the true value of Republic's investment in Realty. The common questions of fact also include whether the Republic Proxy Statement, dated December 10, 1970, which contained in addition to financial statements for its fiscal year ended December 31, 1969, financial statements in respect of the first nine (9) months of 1970, were similarly false and misleading. The questions of law common to the Pacific Class are whether the acts herein alleged violate the Act.

(iv) The common questions of law and fact predominate over any questions which may affect individual members of the class.

(v) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

(d) Plaintiffs Maxwell T. Cohen and Freda Hurley as executors of the Estate of Isaac Siefe, deceased ("Cohen")

represent the class consisting of all persons who are owners of Realty 6% subordinated debentures, due July 1, 1980 (the "Debentures") (the "Debenture Class").

(i) Cohen is a member of the Debenture Class; their claims are typical of the claims of its class members; and they can fairly and adequately protect the interests of members of the Debenture Class.

(ii) There are numerous persons who are beneficial owners of the Debentures.

(iii) The members of the Debenture Class are scattered throughout the United States and are so numerous as to make it impractical to bring them all before the court.

(iv) The claims of the Debenture Class involve common questions of both law and fact. Questions of fact include whether the defendants participated in a scheme to falsify the financial statements of Republic and Realty and whether the defendants used and employed fraudulent, manipulative and deceptive devices to keep the public from becoming aware that a default had occurred under the terms of the indenture agreement covering the Debentures and to make it appear that Realty was a going and viable concern when in fact it was not, and whether the indenture trustee acted properly and prudently. The questions of law common to the class are whether the acts alleged herein constitute violations of the Act, the Rules and Regulations promulgated thereunder and of the Trust Indenture Act.

(v) The questions of law and fact common to the members of the class predominate over any questions affecting individual members.

(vi) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(e) Plaintiff William C. Garrett, Individually, as Custodian and Trustee, and Ralph W. Garrett, Jr., Trustee, ("Garrett") represent the class consisting of all persons who acquired shares of the capital stock of Republic by virtue of having been holders of the shares of the common stock of Mercantile Security Life Insurance Company ("Mercantile") at the time of the merger of Mercantile into Republic effected on April 22, 1971, and made effective for accounting purposes as of January 1, 1971 ("the Mercantile Class").

(i) Garrett is a member of the Mercantile Class; their claims are typical of the claims of the proposed class members and they can fairly and adequately protect the interests of the class.

(ii) The members of the class are so numerous that joinder of all of them is impractical.

(iii) Common questions of law and fact are involved in this action. The common questions of fact include whether the Mercantile Proxy Statement, which included financial statements of Republic for the fiscal years ended December 31, 1969 and 1970, which were supplied by Republic to Mercantile, was false and misleading in failing to describe adequately the nature and status of Republic's investment in Realty, the nature of the income reported by Republic and the true value of Republic's investment in Realty. Questions of law common to the Mercantile class are whether the acts herein violate the Act,

the Securities Act, the Rules and Regulations promulgated thereunder, and state law.

(iv) The common questions of law and fact predominate over any questions which may affect individual members of the class.

(v) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

(f) Plaintiffs Lola Flamm ("Flamm"), Stanley Ferber ("Ferber"), Sy C. Sussman and Ruth L. Sussman ("Sussman") are and were, at all relevant times, shareholders of Republic and bring this action derivatively on behalf of Republic. Sussman bring their complaint against only those defendants named in the related action designated 74 Civ. 1225.

(g) Plaintiffs Harry Asarian and Helen Asarian ("Asarian") are and were, at all relevant times, shareholders of Realty, and bring this action derivatively on behalf of Realty.

(h) Plaintiff Synercon Corporation ("Synercon") is a Tennessee corporation whose principal offices are located at 301 Plus Park Boulevard, Nashville, Tennessee. Synercon brings its action individually.

DEFENDANTS

5. Republic is a large stockholder-owned life insurance company, ranking twelfth in the United States with respect to life insurance in force. It was incorporated in the State of Texas in 1928. Its securities are registered pursuant to the Federal Securities Laws and are traded over-the-counter and it has approximately 22,000 shareholders.

Amended Consolidated Complaint

6. Realty is a publicly held company engaged in the real estate business whose principal corporate offices are at 375 Park Avenue, New York, New York. Realty and its subsidiaries are primarily engaged in the acquisition, development, management and/or resale of real estate. Realty owns interests in apartment buildings, commercial properties, office buildings, shopping centers, hotels and undeveloped land.

7. Peat, Marwick, Mitchell & Co. ("PMM") is a public accounting firm with its principal offices at 345 Park Avenue, New York, New York.

8. Westheimer, Fine, Berger & Co. ("WFB") is a public accounting firm with its principal office at 1301 Avenue of the Americas, New York, New York. WFB audited Realty's financial statements for Realty's fiscal years ended March 31, 1971, 1972 and 1973.

9. The American Stock Exchange, Inc. ("Amex") is a securities exchange located at 86 Trinity Place, New York, New York. The securities of Realty were traded on the Amex. On August 3, 1970, trading in Realty's securities was suspended by the Amex and on September 26, 1973, Realty securities were delisted by the Amex.

10. Security National Bank ("Security") is a successor by merger of Royal National Bank ("Royal"). Security is a national banking association with its main banking office located at 115 Broad Hollow Road, Melville, New York and with branch banking offices located throughout the Southern District of New York.

11. Klein, Hinds and Finke ("KHF") is a public accounting firm which maintains offices at 1185 Avenue of the Americas, New York, New York. KHF was the inde-

pendent auditor for Realty during certain of the relevant periods herein.

12. Alexander Grant & Company ("Grant") is a public accounting firm with its principal offices located at 1185 Avenue of the Americas, New York, New York. Grant was the independent auditor for Realty during certain relevant portions of the period involved herein.

13. Standard and Poor's Corporation ("Standard") has its offices located at 345 Hudson Street, New York, New York and is engaged in the publication of information relating to securities.

14. A. M. Best Co., Inc. ("Best") has its offices at Park Avenue, Morristown, New Jersey and is engaged in the publication of reference publications.

15. First National Realty and Construction Corporation ("First National") is located in Boston, Massachusetts, and is engaged in the general real estate and construction business, including management, operation, development, investment in all types of real estate. First National is an affiliate of Realty. First National has filed a Chapter XI proceeding in the United States District Court for the Eastern District of Massachusetts.

16. Irving Trust Company ("Irving") is a banking association with its main banking office located at 1 Wall Street, New York, New York. Irving is the Indenture Trustee for the Indenture Agreement (the "Indenture") covering the Debentures.

17. Arthur Andersen & Co. ("Andersen") is a public accounting firm with its principal offices at 1345 Avenue of the Americas, New York, New York. Andersen was the

auditor for Republic during a portion of the relevant period described herein.

18. Morris Karp ("Karp") who resides at 63 Mamaroneck Road, Scarsdale, New York, is President, Chief Executive Officer and a Director of Realty.

19. Jerome Socher ("Socher") who resides at 136 East 36th Street, New York, New York is the Treasurer of Realty and has been responsible for the preparation of Realty's quarterly and annual financial statements.

20. Hilary H. Evers ("Evers") resides at 2374 Grandin Road, Cincinatti, Ohio. Evers is a mortgage and real estate broker and served as a director of Realty from 1968 to 1969. In 1971 and 1972 he acted as a finder of real estate appraisers and appraisals for Realty.

21. Eliot Janeway ("Janeway"), Everett Smith ("Smith"), Hobart Taylor, Jr. ("Taylor"), David Stein ("Stein"), Sam Gittlin ("Gittlin"), Arthur Stang ("Stang"), A. H. Franklin ("Franklin"), Robert Haslett ("Haslett"), J. P. Leuzzi ("Leuzzi") and Louis Hubshman, Jr. ("Hubshman"), at all or during a portion of the relevant times herein, were directors of Realty and were actively involved in or had knowledge of the illegal conduct hereinafter alleged.

22. Theodore P. Beasley ("T. Beasley") who resides at 4260 Bordeaux, Dallas, Texas, has at all times relevant hereto, been Republic's Chief Executive Officer, Chairman of the Board and member of Republic's Executive Committee and its Finance and Investment Committee.

23. Clarence J. Skelton ("Skelton") who resides at 7517 Spring Valley Road, Dallas, Texas, during the period relevant herein, was President and a director of Republic and

a member of Republic's Executive Committee and its Finance and Investment Committee.

24. Ronald Rex Beasley ("R. Beasley") who resides at 3785 West Bay Circle, Dallas, Texas, was at all times relevant hereto, Executive Vice President and a director of Republic, Chairman of Republic's Executive Committee and a member of Republic's Finance and Investment Committee.

25. Robert T. Brady ("Brady") who resides at 7069 Irongate, Dallas, Texas, is and at all times relevant hereto, has been Executive Vice President, chief actuary and a director of Republic and a member of Republic's Executive Committee and its Finance and Investment Committee.

26. Thomas G. Nash, Jr. ("Nash") who resides at 5545 Charlestown Drive, Dallas, Texas, during the period relevant herein, was general counsel of Republic, Executive Vice President in charge of Republic's investment division, a director of Republic and a member of Republic's Executive Committee and its Finance and Investment Committee.

27. Samuel P. Smoot ("Smoot") who resides at 6806 Stephanie, Dallas, Texas, has at all times relevant hereto, been Senior Vice President, Treasurer and a director of Republic, and a member of Republic's Executive Committee and its Finance and Investment Committee.

28. Neal Stanley ("Stanley") who resides at 3503 Hillbrook, Dallas, Texas, has at all times relevant hereto, been Vice President and Actuary of Republic and also is chief financial officer with the responsibility of preparing Republic's financial statement.

29. At relevant times herein J. V. Francis ("Francis"), J. Willard Gragg ("Gragg"), W. L. Pickens ("Pickens"), W. N. Stannus ("Stannus"), Joel T. Williams, Jr. ("Wil-

liams") and Sam J. Winstead ("Winstead") were directors of Republic.

30. Phelim F. O'Toole, Jr. ("O'Toole") who resides at 18 South Kings Highway, St. Louis, Missouri, is the President of Phelim O'Toole Real Estate Company in St. Louis, Missouri, and is a real estate appraiser and a member of the Appraisal Institute.

GENERAL ALLEGATIONS

31. Between January, 1968 and April, 1970, Republic invested 17 million dollars in Realty and an additional 4.6 million dollars in Realty's affiliate First National, as follows:

(a) On or about January 16, 1968, Republic purchased 6 million dollars of 7½% notes of Realty.

(b) On or about June 4, 1968, Republic purchased 1.5 million dollars of 6% debentures of Realty.

(c) On or about December 13, 1968, Republic purchased 2.6 million dollars of 6% notes of First National.

(d) On or about August 28, 1969, Republic purchased 2 million dollars of 7¾% notes of First National.

(e) On or about September 25, 1969, Republic for 2 million dollars purchased 20,000 shares of Realty's senior preferred stock.

(f) On or about April 16, 1969, Republic purchased for 1.5 million dollars 15,000 shares of Realty's senior preferred stock.

(g) On or about April 29, 1970, Republic purchased 6 million dollars of 7¼% notes of Realty.

32. Prior to 1970, Republic had disposed of 3 million dollars of the 7½% Realty notes it acquired in January 1968. Accordingly, in September 1970, Republic had a net investment in Realty and its affiliates of 18.6 million dollars, over 30 million dollars in mortgages on properties owned or managed by Realty or First National.

33. Concurrent with and as a condition to the purchase of the securities of Realty and First National by Republic, both Realty and First National acquired real estate properties from third parties who owned the properties subject to large Republic mortgages. Such properties included a group of hotels, office buildings, residential properties and vacant land. Such properties historically had operated at cash flow deficits in that the income from such properties was insufficient to pay the expenses of operating property.

34. By September, 1970, Realty was in financial trouble; Republic's investment in Realty was in jeopardy and Republic faced a write-down of a large portion of the Realty securities it held.

COUNT I

THE REPUBLIC CLASS CLAIM AGAINST REPUBLIC, T. BEASLEY, SKELTON, NASH, R. BEASLEY, BRADY, SMOOT, STANLEY, FRANCIS, GRAGG, PICKENS, STANNUS, WILLIAMS AND WINSTEAD (the "Defendant Republic Directors") FOR VIOLATIONS OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER.

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35. The Republic Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(a) and 5 through 34 as if set forth in full herein.

36. From in or about September, 1970, through March, 1974, Republic and the Defendant Republic Directors

directly or indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading or engaged in acts and practices in the course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities, including the securities of Republic, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

37. As more fully described below, Republic and the Defendant Republic Directors engaged in a fraudulent course of conduct by causing Republic to channel monies through Realty back to Republic to cover up and conceal the failing Republic investment in Realty. Such cover up and concealment were manifested by Republic's secretive investment in Realty and the concealment of such secretive investment. Republic fraudulently reported funds received from Realty as income when in fact they were generated by Republic advancing those sums to Realty which were immediately returned as interest payments on debts owed to Republic by Realty and its affiliates and nominees (the "Realty Complex"). In addition, Republic overstated its assets carrying excessive mortgages on properties acquired by Realty.

38. The following provides further details regarding the fraudulent conduct of Republic and the Defendant Republic Directors:

(a) In September 1970, Republic requested Mercantile National Bank of Dallas, Texas ("MNB") to make a loan

to Realty. On September 16, 1970, MNB loaned 12 million dollars to Realty at a 10% interest rate. The loan was supported by an irrevocable take out commitment issued by Republic to MNB. Under the terms of the commitment Republic agreed to purchase, on March 15, 1971 a 50% participation on the balance of the principal and interest then owing, and on September 15, 1972 to purchase the balance of the principal and interest. MNB is and has been Republic's principal bank. T. Beasley is on MNB's Board of Directors and Francis, Chairman of the MNB, is a director of Republic.

(b) Approximately ½ of the proceeds of 12 million dollars MNB loaned to Realty were in fact disbursed to Republic and not to Realty, as follows:

(i) $4,626,562.50 to repurchase at par plus accrued interest, 4.5 million dollars face amount of 7½% notes of Realty:

(ii) $481,500 to repurchase from Republic the face amount of Realty's 6% debentures; and

(iii) Realty loaned First National one million dollars with which First National purchased from Republic one million dollars face amount of 6% debentures of Realty.

(c) The infusion of new capital into Realty by means of the MNB loan in September 1970, enabled Realty to pay Republic current and accrued interest on notes, mortgages and other obligations. Further, the 12 million dollar infusion of funds into Realty enabled Realty to repurchase at par plus accrued interest, the Realty securities described above. At the time, such notes and debentures were worth considerably less than their par value.

(d) On November 6, 1970, Andersen sent a letter to Republic and set forth Andersen's belief that Republic's 1970 financial statements should include complete and informative disclosures of Republic's involvement with Realty.

(e) In December, 1970, Republic terminated Andersen's engagement as Republic's auditors. In February, 1971, Republic's financial statements for the calendar year 1970 were signed by Stanley, but were not then certified by independent public accountants.

(f) In February, 1972, PMM issued unqualified opinions of Republic's 1970 and 1971 financial statements.

39. The fraudulent course of conduct by Republic and the Defendant Republic Directors continued as follows:

(a) In December, 1970, Republic and Realty entered into a 25.7 million dollar transaction which had the effect of reorganizing Realty debts to Republic and paying off Realty's loan from MNB. Under the scheme, Republic made loans to four corporations which were connected with, or then under the control of, Realty. These four corporations, Automated Realty Services, East Side Equities, Grayerat Corp. and Property Investment Company, then paid Realty for certain assets at inflated prices set by Realty. Realty received 22 million dollars for its assets which were "sold" to the four corporations. In addition, Republic purchased directly from Realty six mortgages for an aggregate of $3,235,000.

(b) The funds received by Realty in the transactions described above were used to pay off certain loans; repurchase notes and preferred stock; and make mortgage payments, to Republic.

40. From January 1, 1971 through September 30, 1971, Realty's liquidity problems continued unabated and Realty's annual report for the fiscal year ended March 31, 1971 reflected a loss of $13.6 million dollars. For Realty and its affiliates to remain reasonably current during this period on its numerous obligations, it was necessary for Republic to infuse new capital into Realty through more transactions in which Realty would receive cash to return to Republic. Such transactions were effected by:

(a) New mortgages placed by Republic directly on properties owned by the Realty Complex which totaled in excess of $2.2 million dollars.

(b) Five mortgages owned by Realty which were transferred to Republic for $920,000.

41. In October, 1971, Republic decided to rid itself of notes and debentures which it held on various Realty related entities which had borrowed Republic money to purchase Realty assets.

42. Republic advised Realty that it would accept real property supported by appraisals as satisfaction of such debt. Republic also agreed that it would place large mortgages on raw land to be acquired by the Realty Complex on a non-recourse basis to Realty in exchange for notes and debentures of Realty owned by Republic. The purpose of the foregoing was to give a false appearance that investments of Republic in Realty were secured by substantial assets.

43. Realty did not own any large tracts of land but quickly went into the market and arranged to buy a number of tracts through nominee subsidiaries. Since Realty had no cash to purchase the tracts of land, it was necessary for

Republic to advance the money and place mortgages on the land simultaneously with the closing of the purchase of the land by Realty. Thus, Realty could use part of the proceeds received from Republic to pay for the land.

44. In the first of the "mortgage-swap" transactions on November 30, 1971, R. E. Duchess Corp. ("Duchess") a Realty subsidiary, purchased a 1,040 acre tract of land in Loudoun County, Virginia for 2.7 million dollars (the "Loudoun Transaction"). Simultaneously Duchess borrowed 6.5 million dollars from Republic secured by the land and prepaid $500,000 in interest to Republic. Realty used 2.7 million dollars to pay for the land and 2 million of the 3.3 million dollars remaining went back to Republic for the "purchase" of debentures of Unity Industries, a shell corporation. Realty retained approximately 1.2 million dollars for corporate purposes.

45. On December 22, 1971, Realty and Republic closed a transaction involving in excess of 31 million dollars. The components of the transaction are as follows:

(a) A Realty subsidiary, Wambat, purchased a 21,000 acre tract of raw land in the Adirondack Mountains in upstate New York for 3.15 million dollars. Republic simultaneously placed a $13,450,000 mortgage on the property. (the "Adirondack Transaction").

(b) Republic placed a mortgage for 1.4 million dollars on a 123 acre tract of land located in West Palm Beach, Florida in favor of a Realty nominee subsidiary, Wambach Realty Corp. Realty contracted to purchase the land for $622,000 and closed the purchase on the same date of the mortgage.

(c) Republic made a direct loan of 4.1 million dollars to a Realty subsidiary, Medical Arts Sanitarium, Inc., which was operating a hospital in New York.

(d) Realty had contracted for the purchase of a 1,395 acre tract of raw land in Lake Havasu, Arizona, in the amount of 2.4 million dollars. On December 22, 1971, Realty "sold" it to Republic for 5.2 million using Republic's money from the proceeds of the sale to pay for the tract.

(e) Realty "sold" to Republic a 206 acre parcel of land in Harriman, New York for 4.4 million dollars. At the same time, it closed on its contract with a third party to purchase the land for the sum of $1,562,000.

(f) Realty purchased an A&P Supermarket in Yonkers, New York for $365,000 and simultaneously "resold" it to Republic for $550,000.

46. In the December 22, 1971 transaction, Realty received an aggregate of $31,103,000 from Republic of which 8 million was used to purchase the land described above. Realty retained 2.6 million for corporate purposes. The remainder was returned to Republic by way of a repurchase of securities of Realty held by Republic, together with interest thereon.

47. At year end, 1971, Republic's investment in the Realty Complex was approximately 86 million dollars. By the latter part of 1972, Republic realized that the Realty nominee corporations which owned the fee interest in the two largest mortgages (Adirondack Transaction and Loudoun Transaction) would not be making the large payments that would soon become due.

48. In October, 1972, Republic sought Realty's aid in connection with the anticipated defaults on such mortgages.

Realty owned the fee interest of a complex in Fairfield, Connecticut, known as the Bigelow-Sanford Complex. The principal tenant in the complex was the Bigelow-Sanford Carpet Company. The carpet company had been phasing out its operations for several years and had given Realty notice that it did not intend to renew its lease which would expire in July, 1973. There were no other major tenants of the complex other than the carpet company and the prospects for finding a tenant for the antiquated industrial site were dim. Several years earlier, Realty had offered Republic an interest in the Bigelow-Sanford Complex but after inspecting the property Republic had refused to make any investment therein. In October 1972, however, Republic and Realty devised a scheme whereby the mortgage payments on the Adirondack Transaction and Loudoun Transaction could be paid as follows:

(a) Realty created a lease of the Bigelow-Sanford tract for Enfield Properties Corp., ("Enfield") a Realty subsidiary, providing for an annual lease payment payable to Realty of $100,000 per year.

(b) With the lease as security, Republic granted a 5 million dollar leasehold mortgage to Enfield. As the carpet company lease was soon to expire, and there were no other tenants for the vast tract, Enfield had little prospect of being able to make the annual payment to Realty or its mortgage payment to Republic.

(c) As part of the transaction, Enfield acquired for $15,000 the two shell corporations that held title to the Adirondack property encumbered by a 13.5 million dollar mortgage and the Loudoun property, a tract which was encumbered by a 6.5 million dollar Republic mortgage. Of the 5 million dollars Republic paid to Enfield for the lease-

hold mortgage, 1.7 million went immediately back to Republic to pay the Republic mortgages on the two tracts. Republic thus paid its mortgage with its own money.

(d) Republic treated the greatest part of the 1.7 million dollars as income on Republic's income statement. Enfield transferred the remaining 3.3 million dollars to Realty and Realty "sold" some debentures and other assets of dubious value to Enfield for part of the 3.3 million dollars. Realty also satisfied the second and third mortgages on their fee interest which totaled $3,650,000 for a fraction of the face amount. Realty was left with an excess of 2 million dollars in cash as a result of the transaction. After the above transaction had been negotiated and concluded Hubshman acquired Enfield for no consideration.

49. The scheme and fraudulent conduct included the following additional transactions:

(a) On or about June 30, 1972, Realty purchased a shopping center in Levittown, Pennsylvania, for 2.3 million dollars. It simultaneously obtained a mortgage on the property from Republic for 4 million dollars and used the proceeds of the mortgage to pay for the property. Of the remainder, $1,150,000 was immediately returned to Republic for pre-payment on various hotel mortgages.

(b) On or about October 5, 1972, Republic granted Realty a 3 million dollar mortgage on a leasehold interest in a shopping center which was purchased contemporaneously by Realty. Of the 3 million dollars received by Realty, one million dollars was used to acquire Realty's interest in the shopping center and 2 million dollars was returned to Republic to acquire, at par plus accrued interest, notes and mortgages previously transferred to Republic by Realty. The notes and mortgages were

secured by decaying properties in Newark, Paterson and Hoboken, New Jersey and Albany, New York.

(c) On or about October 6, 1972, Republic acquired from Realty in satisfaction of $1,500,000 in Realty related debt two notes of Great Plains Hotel Company, Inc. The Great Plains notes aggregated $3,650,000 in face amount but yielded no interest and did not provide for payment of any principal until December 31, 1987 at which time payments of annual installments of $150,000 are scheduled to begin.

50. While Republic was granting new loans to Realty and its related parties from January 1, 1968 through March, 1974, Realty and its affiliated companies and persons were obligated to pay Republic interest on the loans and mortgages already on Republic's books.

51. In Republic's fiscal years 1970, 1971 and 1972, a material portion of Republic's reported income was derived from accrued interest on Realty related debt.

52. While Republic was reporting interest accrued and received on Realty related debt as income in its annual reports to its shareholders, the Securities and Exchange Commission (the "SEC") and to the public, it was continuously making new loans and expanding its debt base with the Realty Complex. Of such reported income a very large percentage was attributable to cash receipts received by Republic from Realty. The source of this cash was loans made to Realty by Republic when financing was not otherwise available to Realty. The ultimate collectibility of these loans was in doubt and Republic should not have recognized income therefrom.

53. Republic in its fiscal years ended December 31, 1970, 1971 and 1972 had invested a substantial portion of its assets in the Realty Complex or in properties which had been obtained from the Realty Complex from satisfaction of debt. Republic failed to report in its reports filed with the SEC and those sent to its shareholders, that a large portion of its assets had been invested in Realty.

54. Republic overstated its assets and income and understated its reserves for losses in financial reports filed with the SEC, sent to its shareholders and filed with the Insurance Department with the State of Texas for Republic's fiscal years ended December 31, 1970, 1971 and 1972.

55. The substance, nature, extent and materiality of Republic's transactions with Realty have not been disclosed to Republic shareholders.

56. The Defendant Republic Directors have participated in the aforesaid scheme and fraudulent course of conduct in the execution of their respective offices at Republic and as such knew or should have known of the fraudulent schemes, the misstatements and omissions of material facts, and the fraudulent courses of business described herein; or, alternatively, were grossly negligent and reckless in failing to detect them in discharging their duties as directors; or alternatively, were negligent and failed to exercise the required diligence and due care in their failure to discover and detect the true facts relating to, and the materiality of, the Republic-Realty transactions and to inquire as to whether or not full and fair disclosure was being made.

57. By virtue of the foregoing, the Republic Class has been damaged.

Amended Consolidated Complaint

COUNT II

THE REPUBLIC CLASS CLAIM AGAINST REPUBLIC AND THE DEFENDANT REPUBLIC DIRECTORS FOR VIOLATIONS OF SECTION 13(a) OF THE ACT AND RULE 13a-1 PROMULGATED THEREUNDER

58. The Republic Class repeats and realleges each and every allegation contained in paragraph 35 through 57 as if set forth in full herein.

59. Republic's financial statements for its fiscal years ended December 31, 1970, 1971 and 1972 are materially false and misleading in that:

(a) They failed to disclose that Republic had invested a large percentage of its assets in the Realty Complex.

(b) Republic's income was materially overstated in that income from Realty-Republic transactions was improperly recognized.

(c) They understated Republic's reserves for losses on real estate transactions.

(d) Republic's assets which were derived from its investment in Realty and its related entities were materially and fraudulently overstated.

60. Reports describing the false and misleading financial statements have been filed with the SEC on Republic's form 10-K for its fiscal years ended December 31, 1970, 1971 and 1972.

61. By reason of the foregoing, Republic and the Defendant Republic Directors have violated, acted in concert in connection with and aided and abetted each other in violation of, Section 13(a) of the Act and Rule 13a-1 thereunder and have damaged the Republic Class.

COUNT III

THE REPUBLIC CLASS CLAIM AGAINST PMM FOR VIOLATIONS OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

62. The Republic Class repeats and realleges each and every allegation contained in paragraphs 58 through 61 as if set forth in full herein.

63. From on or about January 1, 1970 to the present, PMM and Republic directly and indirectly, singly and in concert and aiding and abetting each other by use, means and the instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts and practices in the course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities including the securities of Republic, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

64. As a part of the aforesaid scheme PMM issued its report, including its unqualified opinion of the financial statements of Republic for the years 1970, 1971 and 1972 when such financial statements were materially false and misleading in the manner and the respect more fully set forth in Counts I and II of this complaint.

65. Prior to issuing its auditor's report for Republic's fiscal years 1970 and 1971, PMM had received and reviewed Andersen's November 6, 1970 letter to Republic, the outlines of which are stated in Paragraph 38(d) above.

66. PMM knew or, upon the exercise of proper accounting procedures should have known, that such financial statements were materially false and misleading and were not

prepared in accordance with generally accepted or statutory accounting principles consistently applied, and such statements did not fairly and fully present the results of the periods reported upon, nor fairly present the financial condition, of Republic at the end of such periods. In addition, PMM failed to disclose and correct, in accordance with its professional obligations, such false and misleading financial statements, prior to February 4, 1974.

67. As a result of the misconduct of PMM described in the previous paragraph, the Republic Class has been damaged.

COUNT IV

THE REPUBLIC CLASS CLAIM AGAINST STANDARD AND BEST FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

68. The Republic Class repeats and realleges each and every allegation contained in paragraphs 35 through 57 as if set forth in full herein.

69. From in or about January 1, 1968 to the present, Standard and Best have published in their periodicals financial information regarding various corporations including Republic.

70. Standard and Best have held themselves out to the public as experts in their respective fields. As such, they have stated the good financial condition and future outlook of Republic and have recommended Republic to the public as a good investment. Best stated in its Policyholders Recommendation that "In our opinion it [Republic] has most substantial overall margins for contingencies. Upon the foregoing analysis of it's present position, we recommend this company". Thus, Best is doing more than merely disseminating published and filed information. It is evaluating information and expressing an opinion with respect

to the purchase and sale of Republic stock which information the Republic Class relied upon in purchasing Republic.

71. Standard was also recommending and giving opinion with respect to Republic stock during the periods that Republic stock was being purchased by members of the Republic Class.

72. Standard and Best failed to investigate and verify such facts before making recommendations and giving their opinions. Standard and Best knew or should have known their recommendations and opinions would be relied upon by members of the public who subsequently became part of the Republic Class. Prior to making such recommendations and giving their opinions, Standard and Best willfully or recklessly disregarded the truth.

73. By failing to investigate the facts upon which their opinions were based, Standard and Best knowingly disseminated recommendations without knowing whether such recommendations were correct or not. Such total disregard of the truth and the buying public are violations of Section 10(b) of the Act and Rule 10b-5, promulgated thereunder.

COUNT V

THE REPUBLIC CLASS CLAIM AGAINST REALTY, KARP, SOCHER, JANEWAY, SMITH, TAYLOR, STEIN, GITTLIN, STANG, FRANKLIN, HASLETT, LEUZZI AND HUBSHMAN (the "Defendant Realty Directors") FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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74. The Republic Class repeats and realleges each and every allegation contained in paragraphs 35 through 57 as if set forth in full herein.

75. From on or about March 1, 1969 to the present, Realty and the Defendant Realty Directors, directly, and indirectly, singly and in concert, and aiding and abetting

each other by use of the means of the instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud made untrue statements of material facts, and omitted to state material facts necessary to make statements made not misleading and engaged in acts, practices and in a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of Republic securities, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

76. Realty and the Defendant Realty Directors caused Realty to:

(a) Engage in and report transactions in Realty's 1971, 1972 and 1973 financial statements as *bona fide,* armslength business transactions when, in fact, such transactions were not as reported and were part and parcel of a fraudulent scheme and course of conduct which had as its purpose the creation and maintenance of the appearance that Realty was a viable business entity when in fact it was not and was on the brink of ceasing to exist as an ongoing entity.

(b) Falsely and fraudulently report as income proceeds of Republic mortgages when in fact such proceeds were immediately channelled back to Republic.

77. In March, 1972, immediately prior to the close of Realty's fiscal year, Realty transferred title to the Adirondack and Loudoun tracts from its subsidiaries to corporate shell nominees for nominal consideration. Realty falsely declared as income for its fiscal year ended March 31, 1972 the excess of the Republic mortgages (20 million dollars) over the purchase prices (6 million dollars). Realty never realized any of the 14 million dollar excess as income since

it went back to Republic as part of the fraudulent scheme set forth in Count I.

78. On or about February 11, 1971, Realty created a corporate entity called S. D. Associates, Inc. ("S.D."). On February 12, 1971, Realty transferred assets into S.D. Such assets transferred to S.D. were carried on Realty's books at about $100,000. S.D. issued to Realty a 4 million dollar note at 5% interest rate with all interest and principal payable in a single payment in 1974. The note was a corporate note without recourse to the party who signed on behalf of S.D.

79. In August, 1971, the Realty Complex was indebted to Royal in the amount of $8,350,139. Such loan was over the bank's lending limit with respect to its Realty related debt. To create the appearance of elimination, Realty and Royal arranged the following transactions which took place on August 5, 1971;

(a) Republic loaned Realty 3 million dollars which Realty paid to Royal;

(b) Royal purchased from Realty for 2 million dollars a mortgage on premises known as the Queen Charlotte Hotel in Charlotte, North Carolina. Republic delivered a letter agreement to Royal pursuant to which Republic agreed to purchase such mortgage on or before August 1, 1972 at par plus accrued interest; and

(c) Simultaneously, Royal loaned $3,350,139 to S.D. which transferred said sum to Realty, purportedly as partial payment of the four million dollar note to S.D. described above. This obligation remains unpaid and outstanding.

80. Realty has controlled S.D. from its inception, but Realty has accounted for transactions with S.D. by reporting income statement and balance sheet items for its 1971 and 1972 fiscal years in the same manner as if Realty had negotiated such transactions with an independent party. Accordingly, in view of the sham nature of the Realty-S.D. transactions described in this Count, material adjustments were necessary to Realty's financial statements for its 1971 and 1972 fiscal years.

81. By reason of the foregoing, Realty's financial statements for its fiscal years ended March 31, 1971 and 1972 are materially false and misleading.

82. The Defendant Realty Directors participated in the aforesaid scheme and fraudulent course of conduct in the execution of their respective offices at Realty.

83. By virtue of the foregoing, the Republic Class has been damaged.

COUNT VI

THE REPUBLIC CLASS CLAIM AGAINST WFB FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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84. The Republic class repeats and realleges each and every allegation contained in paragraphs 74 through 80 as if set forth in full herein.

85. From in or about January 1, 1970 to the present Realty and WFB directly and indirectly, singly and in concert and aiding and abetting each other, by the use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud made untrue statements of material facts and

omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated a fraud and deceit upon certain persons in connection with the purchase and sale of Republic securities.

86. WFB audited the financial statements of Realty for Realty's fiscal years ending March 31, 1971, 1972 and 1973. WFB issued qualified opinions on such financial statements for the 1971 and 1972 fiscal years and disclaimed an opinion for the 1973 fiscal year.

87. WFB was the third independent auditor to begin an audit of Realty's financial statements for its 1971 and 1972 fiscal years. WFB was put on notice by consultation with its immediate predecessor, David Berdon & Co. ("Berdon") that Berdon's difficulty in completing its audit of Realty's financial statements was its inability to satisfy itself by ordinary auditing procedures as to the nature and character of a number of Realty-Republic transactions. WFB was aware that Berdon's engagement was terminated by Realty after Berdon stated that it would have to examine the books and records of Republic as an extended auditing procedure prior to the issuance of its auditor's report.

88. WFB permitted its audit reports including its qualified opinion, to accompany Realty's financial statements for the fiscal years ended March 31, 1971 and 1972 when the financial statements were materially false and misleading in that they reported the transactions detailed in Counts I and V as *bona fide*, arms-length business transactions, when in fact such transactions were not as reported and were part and parcel of a fraudulent scheme or course of conduct.

89. WFB knew or, upon the exercise of proper accounting procedures should have known, that such financial statements were materially false and misleading and were not prepared in accordance with generally accepted accounting principles, consistently applied, and such statements did not fairly and fully present the results of the periods reported upon, nor fairly and fully present the financial condition, of Realty at the end of such periods.

90. As a result of the misconduct of WFB described in the previous paragraph the Republic Class was damaged.

COUNT VII

THE REPUBLIC CLASS CLAIM AGAINST ANDERSEN, GRANT AND KHF FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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91. The Republic Class repeats and realleges each and every allegation contained in paragraph 84 as if set forth in full herein.

92. In December, 1970 Republic terminated Andersen's engagement as its auditors.

93. Andersen violated a duty to disclose to the general public and the responsible agencies and to those interested in the welfare of Republic the problems and circumstances of the Realty-Republic transactions.

94. By virtue of the foregoing, Andersen and Republic directly and indirectly, singly and in concert and aiding and abetting each other, by use, means and the instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted material facts necessary to make statements made not misleading and

engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Republic in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

95. Grant and KFH were the independent auditors for Realty during certain relevant portions of the periods above described. Each discovered or knew of the material problems between Realty and Republic. Grant and KFH informed Realty of the fact that the financial statements of Realty and of First National would not be unqualified and both firms were replaced as auditors for Realty. Notwithstanding such replacement, both firms failed in their obligations to the public and to the SEC to fully disclose such facts and to alert responsible authorities thereto. Instead, each firm withheld the facts thereof in order to benefit themselves by not involving themselves.

96. By virtue of the foregoing, Grant, KHF and Realty, directly and indirectly, singly and in concert and aiding and abetting each other, by use, means and the instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud, made untrue statements of facts and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Republic, in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

97. By virtue of the foregoing, the Republic Class was damaged.

COUNT VIII

THE REPUBLIC CLASS CLAIM AGAINST SECURITY FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

98. The Republic Class repeats and realleges each and every allegation contained in paragraph 84 as if set forth in full herein.

99. In August, 1971 the Realty Complex was indebted to Royal in the amount of $8,350,139. Such loan was over Royal's lending limit with respect to its Realty related debt.

100. To benefit Royal, Realty and Republic, a plan was created giving the appearance of removal of the Realty debt. Republic loaned Realty $3,000,000 which Realty paid to Royal. Royal then purchased from Realty for $2,000,000 a mortgage on the Queen Charlotte Hotel in Charlotte, North Carolina. Republic agreed to repurchase it from Royal on or before August 1, 1972 at par plus accrued interest. Simultaneously, Royal loaned $3,350,139 to S.D. knowing that it would be transferred to Realty.

101. By virtue of the foregoing, Security, Republic and Realty, directly and indirectly, singly and in concert and aiding and abetting each other, by use, means and the instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts necessary and omitted to state material necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon persons in connection with the purchase and sale of securities of Republic, in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

102. By virtue of the foregoing illegal and fraudulent transactions, the Republic Class was damaged.

COUNT IX

THE REPUBLIC CLASS CLAIM AGAINST REALTY, EVERS, O'TOOLE AND KARP FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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103. The Republic Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(a), 5 through 34 and 41 through 45, as if set forth in full herein.

104. From on or about December 1, 1971 through 1974, Realty, Evers, O'Toole and Karp directly and indirectly, singly and in concert and aiding and abetting each other, by use and means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of Republic securities all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

105. As a condition to entering into the Loudoun Transaction described in paragraph 44 and the other transactions which were described in paragraphs 45 and 46 which closed on December 22, 1971, Republic requested that Realty supply it with appraisals of the respective properties reflecting values, to justify the amount of the purchase price or the amounts of the mortgages. Republic required that the appraisals be done by an appraiser who was a Member of the Appraisal Institute ("M.A.I.").

106. On December 14, 1971, Karp contracted with Evers, a former director of Realty who is not himself an appraiser, that for a total of $35,000 Evers would supply appraisals for the properties in Lake Havasu, Arizona; West Palm Beach, Florida; Adirondack Mountains, New York; and Harriman, New York.

107. Evers hired O'Toole to do the appraisals paying O'Toole $12,500 of the $35,000 he received. Additionally, Realty paid the expenses of both.

108. On December 17, 1971, Republic's Finance and Investment Committee approved the granting of mortgages for the purchase of the properties involved in the transactions which closed on December 22, 1971.

109. The appraisal reports eventually submitted to Realty by O'Toole and Evers reflect the following values for the subject properties with the contemporaneous Realty purchase price:

Property	Appraisal Value	True Purchase Price by Realty
Lake Havasu	$5.2 million	$2.4 million
Harriman	$4.4 million	$1.6 million
Adirondacks	$ 18 million	$3.1 million
West Palm Beach	$ 2 million	$0.6 million

110. O'Toole accompanied by Evers did not visit the sites of the subject properties until after the Republic Finance and Investment Committee had approved the transactions on December 17, 1971.

111. The appraisals written by O'Toole were delivered by Realty to Republic on January 4, 1972.

112. The appraisals were back-dated to December 13, 1971 which was prior to the meeting of Republic's Finance and Investment Committee.

113. The appraisals were fraudulent and inflated and ignored contemporaneous purchase prices of properties involved, as well as the sale prices of comparable properties.

114. By virtue of the foregoing, the Republic Class was damaged.

COUNT X

THE REPUBLIC DERIVATIVE CLAIM AGAINST REALTY, THE DEFENDANT REPUBLIC DIRECTORS, THE DEFENDANT REALTY DIRECTORS, PMM, WFB, EVERS AND O'TOOLE (The "Republic Derivative Defendants")

115. Flamm, Sussman and Ferber repeat and reallege each and every allegation contained in paragraphs 1 through 3, 4(f), 5 through 8 and 18 through 34, as if set forth in full herein.

116. Knowing that the Republic investments in Realty and in the Realty Complex were in great jeopardy and Realty and the Realty Complex would be unable to meet their obligations under such investments, commencing on or about September, 1970, and continuing thereafter to December, 1973, the Defendant Republic Directors, the Defendant Realty Directors, PMM, WFB and Realty devised and embarked upon and carried to fruition a continuous series of manipulative and deceptive schemes, plans, artifices and devices to: conceal Republic's failing investments in Realty; conceal Realty's inability to meet its obligations under said investments; falsely create the illusion that Realty was financially sound; and systematically

loot and siphon off the assets of Republic for their benefit. Such fraudulent scheme was carried out by, *inter alia*:

(a) Causing Republic to invest enormous additional funds into Realty.

(b) Causing Republic to make excessive mortgage loans to Realty with knowledge that the security thereon was fraudulently overvalued.

(c) Causing Republic to purchase properties from Realty with knowledge that such properties were fraudulently overvalued.

(d) Causing Republic to restructure the indebtedness of Realty and the Realty Complex to Republic replacing older, failing investments in Realty with newer, but still unsound investments, some secured, but with security that was fraudulently overvalued.

(e) Causing the proceeds of loans and additional investments in Realty by Republic to be, in substantial part, concurrently or shortly thereafter returned to Republic (nominally in payment of interest and other obligations) and causing Republic to falsely treat and report a substantial portion of its own monies so returned as income.

(f) Causing Republic to conceal and fail to report the true nature of the aforesaid transactions.

(g) Causing Republic to overstate the value of its investments in Realty, and

(h) Causing Republic to conceal the true value of its investments in Realty, the jeopardy to those investments and the doubtful collectibility of such investments.

117. As part of such fraudulent scheme, the Defendant Republic Directors, the Defendant Realty Directors, PMM,

WFB and Realty, with full knowledge of the failing condition of Realty, caused Republic to continue to invest ever increasing amounts of moneys in Realty in a multitude of complex transactions and in which Republic was caused to give money for little or nothing in return.

118. Such transactions, included the following:

(a) The [illegible] million dollar loan from MNB to Realty as described in paragraphs 38(a), 38(b) and 38(c), which paragraphs are incorporated as if set forth in full herein;

(b) The transaction described in paragraph 39(a) which is incorporated as if set forth in full herein; and

(c) The transactions described in paragraphs 40 through 45 which are incorporated as if set forth in full herein.

119. Flamm, Sussman and Ferber repeat and reallege each and every allegation contained in paragraphs 46 through 48, 49(a), 49(b), 49(c) and 50 as if set forth in full herein.

120. In order to aid, abet and conceal the foregoing transactions and others and the schemes and fraudulent activities of Realty, the Defendant Realty Directors and the Defendant Republic Directors and PMM issued false and unqualified certifications in connection with financial statements of Republic and used its name in connection with said false financial statements. In like manner, WFB in order to aid, abet and conceal the foregoing transactions and others and the schemes and fraudulent activities of said defendants, issued false certifications in connection with the financial statements of Realty and used its name in connection with said false financial statements. Without the participation, aiding and abetting of PMM and WFB,

the foregoing scheme and fraudulent devices could not have been continued since revelation of the true facts would have caused termination of the conspiracy.

121. As a consequence of the foregoing transactions and the schemes and fraudulent activities of the Republic Derivative Defendants, balance sheets for Republic for the years ending 1970, 1971 and 1972 and the profit and loss statements for the annual periods ending on such dates (said financial statements being issued to the public in the first months of 1971, 1972 and 1973, respectively) materially overstated the assets of Republic. Such material overstatements of assets and profits of Republic, the false certifications and the fraudulent transactions which gave rise to such overstatements were not made known to the shareholders of Republic or the investing public until April 1974 and affected the prices at which securities of Republic traded.

122. Evers and O'Toole issued appraisals with respect to certain real estate and other properties owned by Realty, or which were to be purchased by it and which served as the subject matter of the real estate transactions described above, such appraisals being highly inflated and fraudulent. Accordingly, Evers and O'Toole aided and abetted the foregoing transactions and the foregoing schemes and fraudulent activities.

123. The purchase price of the mortgages and notes and other securities issued by Realty and paid by Republic were materially overstated; were not negotiated at arms length; and said securities were purchased in breach of fiduciary duties owed by the Defendant Republic Directors and Defendant Realty Directors. The purchase prices paid were highly inflated and by reason of the scheme in excess of

$50,000,000 was taken, without consideration, from Republic and such taking constitutes a wast [sic] and spoilation of the assets of Republic.

124. By virtue of the foregoing, the Republic Derivative Defendants, directly and indirectly, singly and in concert, and aiding and abetting each other, by use, means and the instrumentalities of interstate commerce and the mails, employed devices, schemes, artifices to defraud, made untrue statements of material facts necessary and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and courses of conduct which operated as a fraud and deceit upon Republic, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder. Further, said acts constitute violations of Section 17(a) of the Securities Act and Sections 13(a), 14(a), 18 and 20(a) of the Act, all to the damage of Republic and for which Republic has no adequate remedy at law.

125(a) To the extent required by law, demand upon the board of directors of Republic to correct the abuses complained of would be futile because:

(i) All of the directors have participated in the wrongdoings and have approved the fraudulent practices and devices;

(ii) A majority of the board of directors of Republic and its chief executive officers are defendants herein and thus the wrongdoers would have to take action against themselves and their interest; and

(iii) The action would be, if demand were heeded, placed in the hands of the wrongdoers.

125(b) To the extent required by law, demand upon the shareholders of Republic to correct the abuses complained of would be futile because:

(i) Under the laws of Texas and New York, the directors, not the shareholders, manage the affairs of the corporation, including the bringing of actions for it;

(ii) The shareholders of Republic are without power to ratify or approve the fraudulent acts complained of;

(iii) It is unreasonable to impose upon Flamm, Sussman and Ferber the requirement of soliciting proxies in order to bring this action and incur the expense of contacting approximately 22,300 shareholders; and

(iv) T. Beasley and his family own and control approximately 28% of the outstanding common shares of Republic and having effective working control of Republic could not be expected to authorize the bringing of an action against himself and others, and if they did, the action would be in the hands of wrongdoers.

126. This action is not a collusive one brought to confer on this Court jurisdiction of the action which it otherwise would not have.

COUNT XI

THE REALTY CLASS CLAIM AGAINST REALITY AND THE DEFENDANT REALTY DIRECTORS FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

127. The Realty Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(b), 5 through 57 and 76 through 82 as if set forth in full herein.

128. From on or about March 1, 1969 to 1974, Realty and the Defendant Realty Directors, directly and indirectly, singly and in concert, aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of Realty securities, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

129. By virtue of the foregoing, the Realty Class has been damaged.

COUNT XII

THE REALTY CLASS CLAIM AGAINST REALTY AND THE DEFENDANT REALTY DIRECTORS FOR VIOLATION OF SECTION 12(a) OF THE ACT AND RULE 13a-1 PROMULGATED THEREUNDER

130. The Realty Class repeats and realleges each and every allegation contained in paragraphs 127 and 128 as if set forth in full herein.

131. Realty's Financial reports for the fiscal years ending March 31, 1971, 1972 and 1973 contained, among other things, reports of earnings which were false and misleading and also report transactions as *bona fide*, arms-length transactions which were in fact sham transactions which took place between Realty and its affiliates, nominees and other related entities as described in Counts I and V.

132. Reports including said misleading statements which have been filed with the SEC are Realty's annual

reports on Form 10-K for its fiscal years ended March 31, 1971, 1972 and 1973.

133. By reason of the foregoing, Realty and the Defendant Realty Directors have violated and aided and abetted violations of Section 13(a) of the Act and Rule 13a-1 thereunder, all to the damage of the Realty Class.

COUNT XIII

THE REALTY CLASS CLAIM AGAINST REALTY, EVERS, O'TOOLE AND KARP FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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134. The Realty Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(b), 5 through 34, 41 through 45 as if set forth in full herein.

135. From on or about December 1, 1971 through 1974, Realty, Evers, O'Toole and Karp directly and indirectly, singly and in concert and aiding and abetting each other, by use and means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of Realty securities all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

136. The Realty Class repeats and realleges each and every allegation contained in paragraphs 105 through 113 as if set forth in full herein.

137. By virtue of the foregoing, the Realty Class was damaged.

Amended Consolidated Complaint

COUNT XIV

THE REALTY CLASS CLAIM AGAINST REALTY AND THE DEFENDANT REALTY DIRECTORS FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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138. The Realty Class repeats and realleges each and every allegation contained in paragraph 127 as if set forth in full herein.

139. From on or about January 1, 1970 to 1974, Realty and the Defendant Realty Directors, individually and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

140. On August 1, 1970, a dividend of 6-¼ cents per share was payable on Realty's common shares.

141. On July 31, 1970, Karp ordered $200,000 of funds of Avionics Investing Corporation ("Avionics"), a small business investing company, wholly-owned by Realty transferred from Avionics' bank account in New Jersey to Realty's account at Bankers Trust in New York.

142. The funds transferred from Avionics were used to pay a dividend to Realty's common shareholders on August 1, 1970 which dividend was paid at the rate of 6-¼ cents per share and aggregated $196,152.90.

143. Relaty [sic] did not disclose that it was able to pay its dividend on August 1, 1970, only through the means of an illegal diversion of funds from a small business investment company. By declaring and paying such dividends through the means described herein, Realty perpetrated the illusion that it was in relatively sound financial condition when in fact the company was in dire financial straits.

144. On September 30, 1970 Realty repaid $200,000 to Avionics, with cash proceeds from the $12,000,000 MNB loan to Realty in September of 1970 which had been arranged by Republic as described in paragraph 38.

145. The Defendant Realty Directors have participated in the aforesaid scheme and fraudulent course of conduct in the execution of their respective offices at Realty.

146. By virtue of the foregoing, the Realty Class has been damaged.

COUNT XV

THE REALTY CLASS CLAIM AGAINST REPUBLIC, THE DEFENDANT REPUBLIC DIRECTORS AND PMM FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER.

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147. The Realty Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(b), 5 through 56, 59 and 60, 63 through 66 and 76 through 82 as if set forth in full herein.

148. By virtue of the foregoing, Republic, the Defendant Republic Directors and PMM directly and indirectly, singly and in concert and aiding and abetting each other, by the use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and

artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty, all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

149. By virtue of the foregoing, the Realty Class has been damaged.

COUNT XVI

THE REALTY CLASS CLAIM AGAINST WFB AND REALTY FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER.

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150. The Realty Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(b), 5 through 56, 76 through 82, 85 through 89 and 127 through 146 as if set forth in full herein.

151. By virtue of the foregoing, Realty and WFB directly and indirectly, singly and in concert aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities, including those of Realty in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

152. By virtue of the foregoing, the Realty Class has been damaged.

COUNT XVII

THE REALTY CLASS CLAIM AGAINST AMEX FOR VIOLATION OF SECTION 10(B) OF THE ACT AND RULE 10B-5 PROMULGATED THEREUNDER

153. The Realty Class repeats and realleges each and every allegation contained in paragraph 150 as if set forth in full herein.

154. The securities of Realty were listed and traded on the Amex until on or about September 26, 1973. The Realty Class purchased such securities because of the flexibility, liquidity and reliability of securities listed and traded on the Amex as propounded by it to the public.

155. After failing to take action for a considerable period of time, the Amex conducted an extensive investigation of Realty during which it ascertained and came into possession of many or all the facts herein alleged.

156. Notwithstanding such information, the Amex withheld and omitted to disclose to the Realty Class and to the investing public the facts which Amex had ascertained, despite its duty to oversee such full disclosure.

157. By virtue of the foregoing, the Amex and Realty directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon certain

persons in connection with the purchase and sale of securities of Realty all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

158. By virtue of the foregoing, the Realty Class was damaged.

COUNT XVIII

THE REPUBLIC CLASS CLAIM AGAINST AMEX FOR VIOLATION OF SECTION 10(B) OF THE ACT AND RULE 10B-5 PROMULGATED THEREUNDER

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159. The Republic Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(a) 5 through 57, 76 through 89 and 131, 132, 135, 105 through 113 and 140 through 145 as if set forth in full herein.

160. The securities of Realty were listed and traded on the Amex until on or about September 26, 1973. The Republic Class purchased Republic securities *inter alia* because Republic's investment in Realty and because of the flexibility, liquidity and reliability of securities listed and traded on the Amex as propounded by the Amex to the investing public.

161. After failing to take action for a considerable period of time, the Amex conducted an extensive investigation of Realty during which it ascertained and came into possession of many or all the facts herein alleged.

162. Notwithstanding such information, the Amex withheld and omitted to disclose to the Republic Class and to the investing public the facts which Amex had ascertained, despite its duty to oversee such full disclosure.

163. By virtue of the foregoing, the Amex and Realty, directly and indirectly, singly and in concert and aiding

and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading and engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Republic all in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

164. By virtue of the foregoing, the Republic Class was damaged.

COUNT XIX

THE REALTY CLASS CLAIM AGAINST ANDERSEN, KHF AND GRANT FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

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165. The Realty Class repeats and realleges each and every allegation contained in paragraph 150.

166. In December, 1970 Republic terminated Andersen's engagement as its auditor.

167. Andersen violated a duty to disclose to the general public and the responsible agencies and to those interested in the welfare of Republic the problems and circumstances of the Realty-Republic transactions.

168. By virtue of the foregoing, Republic and Andersen, directly and indirectly, singly and in concert and aiding and abetting each other, by use, means and the instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state facts

necessary to make the statements made not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon persons in connection with the purchase and sale of securities of Realty, in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

169. Grant and KHF were the independent auditors for Realty during certain relevant portions of the periods above described. Each discovered and knew of certain of the material problems between Republic and Realty. Grant and KHF informed Realty of the fact that the financial statements of Realty and of First National would not be unqualified, and both firms were replaced as auditors for Realty. Notwithstanding such replacement, both firms failed in their obligations to the public and to the SEC to fully disclose such facts and to alert responsible authorities thereto. Instead, each firm withheld the facts thereof in order to benefit itself by not involving itself.

170. By virtue of the foregoing, Grant, KHF and Realty, directly and indirectly, singly and in concert and aiding and abetting each other by use of the means and instrumentalities of interstate commerce and the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, omitted to state facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon persons in connection with the purchase and sale of securities of Realty, in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

171. By virtue of the foregoing, the Realty Class was damaged.

COUNT XX

THE REALTY CLASS CLAIM AGAINST SECURITY FOR VIOLATION OF SECTION 10(b) AND RULE 10b-5 PROMULGATED THEREUNDER

172. The Realty Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(b), 5 through 56, 78 through 82 and 99 through 101 as if set forth in full herein.

173. By virtue of the foregoing, Security, Realty and Republic have directly and indirectly, singly and in concert and aiding and abetting, each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty, all in violation of section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

174. By virtue of the foregoing the Realty Class has been damaged.

COUNT XXI

THE REALTY DERIVATIVE CLAIM AGAINST REPUBLIC, THE DEFENDANT REPUBLIC DIRECTORS, THE DEFENDANT REALTY DIRECTORS, PMM, WFB, ANDERSEN, GRANT, KHF, AMEX, SECURITY, EVERS AND O'TOOLE

175. Asarian repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(g) and 5 through 34 as if set forth in full herein.

176. Since September 1970, Republic, the Defendant Republic Directors, the Defendant Realty Directors, PMM, WFB, Andersen, Grant, KHF, Security, Evers and O'Toole (the "Realty Derivative Defendants"), directly and indirectly singly and in concert, and aiding and abetting each other, by the use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make their statements made, not misleading, and engaged in acts, practices and a course of business which operated a fraud and deceit upon persons in connection with their purchase and sale of securities, in violation of Section 10(b) of the Act and of Section 10b-5 thereunder.

177. In September 1970, the liquidity and cash flow problems of Realty became acute. Realty was unable to meet current obligations. Republic requested MNB to loan funds to Realty. On September 16, 1970, MNB so loaned $12 million at 10% interest, with an irrevocable take-out commitment by Republic. Republic agreed to purchase on March 15, 1971 50% participation in the balance then owing, and on September 15, 1972 to purchase the balance.

178. Approximately half the proceeds of the MNB loan was paid to Republic as follows:

(a) $4,626,562.50 to repurchase, at par plus accrued interest, $4.5 million face amount of Realty 7½% notes;

(b) $481,500 to repurchase from Republic such face amount of Realty's 6% debentures;

(c) Realty loaned its affiliate, $1 million which then purchased from Republic $1 million face amount of 6% debentures then worth far less than face amount.

179. On October 30, 1970, the Committee on Valuation of Securities of the National Association of Insurance Commissioners recommended to Republic that Realty debentures be valued at zero for Republic statement purposes at December 31, 1970. On November 6, 1970, Andersen as Republic's auditors, advised Republic that its audit of Republic's 1970 financial statement would be qualified because of the Realty transactions. Andersen advised that it had obtained knowledge of the condition of Realty and Realty faced collapse but for the Republic financing.

180. In December 1970, Republic terminated Andersen's engagement. In February 1971, Republic's financial statements for calendar year 1970 were signed by Stanley, Republic's actuary, and not certified by independent public accountants. In February 1972, PMM issued unqualified opinions on Republic's 1970 and 1971 financial statements. On December 11, 1970, Republic mailed its proxy statement including financial statements of Republic for nine months ended September 30, 1970. Such statements were false and misleading in that they contained no disclosure of Republic investments in Realty and Realty's dangerous financial condition, designed to avoid disclosure of Realty's condition and Republic's involvement therein, and in that the substance, nature and materiality of the Republic-Realty problems were not disclosed.

181. Andersen, PMM and Republic violated a duty to disclose to the general public and the responsible agencies and to those interested in the welfare of Realty, the problems and circumstances of the Realty-Republic transactions.

182. In December 1970, prior to the close of Republic's fiscal year, Republic and Realty entered into a $25.7 million

transaction to restructure Realty's debt to Republic and pay off Realty's loan from MNB, for the prime purpose of eliminating the take-out commitment. Such transaction is described in paragraph 39 which is incorporated herein. The net benefit to Republic was that it removed from its books the remaining unsecured Realty securities it held, without losses, it was not liable on a take-out commitment to Mercantile, there were no defaults to Republic on mortgages.

183. At the close of its 1970 fiscal year, Republic's investment in Realty was $56 million of Republic's $277 million total assets. Realty had a loss of $13.6 million in its fiscal year ending March 31, 1971.

184. For Realty to remain current on its obligations to Republic and to protect Republic, and further hide Realty problems, a further plan and scheme was conceived as described in paragraphs 41 through 49 which are incorporated herein.

185. In October 1971, Republic loaned a Realty affiliate $6 million secured by non-recourse debentures of the affiliate. The money was paid to Realty which paid it over to Republic.

186. Republic and the other Realty Derivative Defendants caused Realty to enter into numerous transactions with Republic in which Realty was utilized as a funnel and a conduit for Republic to create business activity and financial transactions on its books and records. These other transactions included the use of shell dummy corporate affiliates of Realty, the purchase of tracts of raw land, the purchase and leasing of industrial property previously owned by Realty, shopping centers, notes and mortgages, and other

similar financial schemes. The purpose of the Realty Derivative Defendants was first, to benefit Republic at the expense of Realty in permitting Republic to claim on its own books and records and in its published reports to its shareholders and to affected governmental jurisdictions, that Republic was engaged in substantial real estate and financial transactions of profit to Republic and; secondly, to permit Republic to hide and cover up from its shareholders and governmental authorities the fact that its initial financial transaction with Realty were improper and in jeopardy, thus requiring sizable financial reserves on the books of Republic which Republic had failed to set aside.

187. While Republic was recording interest on its Realty debt as income, it was making new loans to Realty to prevent disclosure of Realty's financial problems. The Defendant Republic Directors participated in the scheme and continuous course of conduct individually and as officers of Republic and they knew of the facts thereof. Since on or about January 1, 1970, the Defendant Republic Directors and each of them, directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made, not misleading and they engaged in acts, practices and a course of business which operated as a fraud and deceit upon certain persons in connection with the purchase and sale of securities of Realty and certain of its affiliates, in violation of Section 10(b) of the Act and Rule 10b-5 thereunder.

188. As a part of said plan and scheme, PMM issued an audit report, and unqualified opinion on the financial state-

ments of Republic for 1970, 1971 and 1972, when it knew that such statements were materially false and misleading in the respects alleged herein. Prior to issuing its reports and opinions, PMM reviewed Andersen communications with Republic.

189. The defendants caused Realty to engage in and report transactions in their 1971, 1972 and 1973 statements, as bona fide arms-length transactions, whereas such transactions were part of a fraudulent scheme which had as its purpose the maintenance of an appearance that Realty was a viable entity and being benefited by the transactions and to report the proceeds from Republic loans, when in fact the proceeds were immediately paid back to Republic from Realty as its conduit.

190. In August, Realty was indebted to Royal for $8,350,139 which amount was beyond the legal limit permitted to Royal. To benefit Royal and Republic and deceptively create the appearance of removal of such debt, the Realty Derivative Defendants planned and executed a transaction on August 5, 1971 by which Republic loaned Realty $3 million which Realty paid to Royal. Royal purchased from Realty for $2 million a mortgage on premises in North Carolina. Republic agreed to repurchase it from Royal on or before August 1, 1972 at par plus accrued interest. Simultaneously, Royal loaned $3,350,139 to a Realty affiliate knowing it would be transferred to Realty.

191. KHF and Grant were independent auditors for Realty. They had knowledge of the facts herein alleged. Nevertheless and disregarding their duty to disclose and knowing that the public would rely upon the expertise and the duty of disclosure of an independent certified auditor, Grant and KHF joined the conspiracy and aided and

abetted other defendants in the plan and scheme and failed and refused to develop the facts herein alleged and disclose them to the public and agencies involved, while knowing that their said conduct would damage Realty.

192. WFB audited Realty financial statements for years ending March 31, 1971, 1972 and 1973 and issued qualified opinions on such statements for 1971 and 1972 and disclaimed opinion for 1973. WFB was the third auditor to begin an audit of Realty financial statements for 1971 and 1972 and had been put on notice by consultation with its predecessor, Berden, that the difficulty in completing the audit was inability to satisfy by ordinary auditing procedures, the nature and character of Realty and Republic transactions. WFB was aware that Berden's engagement was terminated by Realty when it required examination of books and records of Republic, prior to completion of a report for Realty.

193. WFB permitted its reports and opinions to accompany Realty statements for 1971 and 1972 despite such knowledge and also knowing the statements to be materially false and misleading and that certain transactions described by the defendants as arm's length, were not so and were involved in the fraudulent plan and scheme and contained among other things, earnings which were false and misleading.

194. As a condition to entering into certain transactions on December 22, 1971, Republic requested Realty to supply M.A.I. appraisals reflecting values which would justify the size of the mortgages. On December 14, 1971, Karp contracted with Evers for a $35,000 fee, to supply such appraisals. Evers engaged, in turn, O'Toole to do the appraising, paying O'Toole $12,500. Evers and O'Toole

knew that their appraisal values would be falsely increased as required by the other defendants. The appraisals were backdated to December 13, 1971. O'Toole did not visit the properties. The appraisals were inflated and ignored contemporaneous purchase prices of the same and comparable properties. On December 17, 1971, Republic approved the mortgages or purchases of such properties, knowing of the facts alleged.

195. On August 1, 1970, a dividend of 6¼ cents per share was payable on Realty common shares. On July 31, 1970, Karp ordered $200,000 of cash from a Realty subsidiary, transferred to a Realty account at Bankers Trust Company to pay the dividend. Karp had not disclosed the inability of Realty to pay the dividend except by means of such diversion of funds. By so declaring and paying such dividend, the Defendant Realty Directors perpetuated the plan and scheme of non-disclosure and misrepresentation. On September 30, 1970 Realty repaid the $200,000 to its subsidiary from a $12 million loan made to Realty from MNB.

196. On June 15, 1972, the United States District Court for the District of Columbia, in *SEC* v. *Realty Equities Corporation of New York,* C.A. No. 2544-71, in an Order of Final Judgment of Permanent Injunction against Realty, directed:

> "1. That defendant shall file with the plaintiff Securities and Exchange Commission, and duplicate originals with the American Stock Exchange, an annual report on Form 10-K for its fiscal year ended March 31, 1972, by July 20, 1972; and
>
> "2. That defendant be and hereby is permanently enjoined and restrained from failing subsequent

> to July 20, 1972, to file with the plaintiff Securities and Exchange Commission, and duplicate originals with the American Stock Exchange, timely and accurate periodic reports on Forms 10-K, 9-K and 10-Q, or any other forms, in contravention of Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a), and the rules and regulations thereunder."

The Realty Derivative Defendants have caused Realty to fail to obey said order.

197. Until September 26, 1973, the securities of Realty were listed and traded on the Amex. The securities of Realty were purchased because of the liquidity, full disclosure and responsibility involved in securities traded on the Amex. After inaction by Amex despite its knowledge of the allegations herein, Amex investigated Realty. Despite the aforesaid, Amex delisted the securities of Realty. Amex failed to disclose to the public the facts it had ascertained. Amex breached its duty to Realty and the investing public of full disclosure and protection and Amex thus caused further damage to Realty.

198. The actions of all the Realty Derivative Defendants, excepting Amex, were completed in a deliberate, wanton and reckless manner, without regard for the interests of the investing public, and as part of the broad plan and scheme to benefit each of them in his or its own manner.

199. As a result of the actions of the Realty Derivative Defendants, numerous actions in courts of law were commenced against Realty and other of the defendants herein for damages caused to securities holders of Realty and to securities holders of Republic. Such action by the SEC and the actions in various jurisdictions have and will cause

substantial damage to Realty by way of financial loss and by way of damage to its reputation and ability to properly function in the commercial market.

200(a). Demand upon the directors of Realty to bring this action would be futile because the directors of Realty are themselves wrongdoers or aiders and abettors of the wrongdoing. They have long known of the violations alleged and have taken no action despite the commencement of the action by the SEC and of the private representative actions. If the directors were to have commenced this action, they would be required to sue themselves or some of them and to sue companies and individuals with whom they have close affiliation. The result would be that the lawsuit would be in the hands of persons not truly interested in benefit and welfare of Realty.

(b) Demand upon the shareholders of Realty to bring this action is unnecessary and will be futile because:

(i) the wrongs constitute violations of law and cannot be ratified by the shareholders;

(ii) the wrongs constitute gross abuse of trust and willful conversion and could be ratified only by unanimous action;

(iii) management of Realty is in the directors and not in the shareholders;

(iv) a resolution by shareholders to bring such action would be futile since it would place control in the wrongdoers;

(v) demand would place an unconscionable burden on Asarian in soliciting proxies;

(vi) demand would cause undue delay, be prejudicial and create a danger of barring claims by a defense of the Statute of Limitations and laches; and

(vii) the shareholders are too numerous to bring them all before this Court.

201. This action is not a collusive brought to confer on this Court's jurisdiction which it otherwise would not have.

COUNT XXII

THE PACIFIC CLASS CLAIM AGAINST REALTY, REPUBLIC, THE DEFENDANT REALTY DIRECTORS AND THE DEFENDANT REPUBLIC DIRECTORS FOR VIOLATION OF SECTION 14 OF THE ACT AND REGULATION 14a-9 PROMULGATED THEREUNDER

202. The Pacific Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(c), and 5 through 56 as if set forth in full herein.

203. On or about December 11, 1970, Republic mailed a proxy statement to its shareholders seeking authorization to issue 1,490,392 shares of Republic stock for all of the outstanding shares of Pacific with the knowledge that such proxy statement would be disseminated to the investing public, including the shareholders of Pacific. Such proxy statement included financial statements of Republic for the 1969 calendar year, as well as for the nine month period ended September 30, 1970.

204. On or about December 11, 1970, the Pacific Proxy Statement was mailed for the proposed merger to Pacific shareholders. Such proxy statement included financial statements of Republic for the 1969 calendar year, which statements have been provided to the officers and directors of Pacific by Republic with the knowledge and intent that such financial statements would be included in the Pacific Proxy Statement.

205. Republic knew, or on the exercise of reasonable diligence should have known, that the financial statements at the time and in the light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements contained in such financial statements not false or misleading.

206. The proxy statements omitted to disclose the nature and scope of Republic's investments in Realty. In addition, the proxy statements omitted to disclose Realty's financial distress which Republic and the Defendant Republic Directors knew would, in all likelihood, result in substantial losses to Republic by virtue of Republic's substantial investment in Realty securities and in mortgages or properties owned or controlled by Realty.

207. Shareholder approval for the proposed merger of Pacific with and into Republic was obtained as a result of the foregoing false and misleading proxy statements. The merger of Pacific into Republic was consummated following such approval.

208. By reason of the foregoing, the Pacific Class is entitled to rescission of the merger agreement and damages.

COUNT XXIII

THE PACIFIC CLASS CLAIM AGAINST REALTY, REALTY [sic], THE DEFENDANT REALTY DIRECTORS AND THE DEFENDANT REPUBLIC DIRECTORS FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5

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209. The Pacific Class repeats and realleges each and every allegation contained in paragraphs 202 through 208 as if set forth in full herein.

210. As hereinabove set forth, Realty, Republic, the Defendant Realty Directors and the Defendant Republic Directors directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Pacific Class in connection with the purchase and sale of securities of Pacific and Republic, in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

211. By reason of the foregoing, the Pacific Class is entitled to rescission of the merger agreement and damages.

COUNT XXIV

THE PACIFIC CLAIM AGAINST REALTY, REPUBLIC, THE DEFENDANT REALTY DIRECTORS AND THE DEFENDANT REPUBLIC DIRECTORS FOR BREACH OF CONTRACT

212. The Pacific Class repeats and realleges each and every allegation contained in paragraph 209 as if set forth in full herein.

213. In or about December, 1970, Republic and Pacific entered into an Agreement of Merger (the "Agreement").

214. Pursuant to the Agreement and the shareholder vote which was achieved as a result of the solicitation of proxies as hereinabove described, Pacific was merged into Republic and ceased its corporate existence on or about January 1, 1971.

215. Article IV of the Agreement provided in pertinent part as follows:

> "(g) Republic warrants and agrees with Pacific as to Republic and Pacific warrants with Republic as to Pacific that:
>
> * * *
>
> 2. The Balance Sheet of the corporation [Republic] at December 31, 1969 and the accompanying Statement of Income for the 12 months then ended, copies of which have been previously furnished, fully set forth the condition of the corporation at such date and the results of its operations for the 12 month period then ended, in conformity with generally accepted accounting principles. Said Balance Sheet reflects all known claims against, and debts and liabilities of, the corporation, fixed or contingent, as of the date thereof. All tax liability for the current and any prior years has been paid in full or adequately provided for, except as noted therein, and since such date, there has been no material adverse change in the assets or liabilities or in the financial condition or business of the corporation."

216. Republic breached the aforesaid provision of the Agreement, in that its balance sheet at December 31, 1969 and in its accompanying statement of income for the same period, misrepresented the condition of Republic and further did not disclose that during 1970 and prior to the execution of the Agreement there were material adverse changes in the financial condition of Republic.

217. The Pacific Class is the third party beneficiary under the aforesaid Agreement.

218. By virtue of Pacific's non-existence under the circumstances hereinabove described, Pacific's corporate right to sue has developed upon its shareholders at the time of the merger, such shareholders comprising the Pacific Class.

219. By virtue of the foregoing, Realty, Republic, the Defendant Realty Directors and the Defendant Republic Directors are liable to the Pacific Class for damages.

COUNT XXV

THE MERCANTILE CLASS CLAIM AGAINST REALTY, REPUBLIC, THE DEFENDANT REALTY DIRECTORS AND THE DEFENDANT REPUBLIC DIRECTORS FOR VIOLATION OF SECTION 10(b) OF THE ACT AND REGULATION 10b-5 PROMULGATED THEREUNDER

220. The Mercantile Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(e) and 5 through 56 as if set forth in full herein.

221. On or about March 12, 1971, the Mercantile Proxy Statement was mailed to Mercantile shareholders in connection with the proposed merger of Mercantile into Republic. Such proxy statement included financial statements of Republic for the 1969 and 1970 calendar years, which statements were provided to the officers and directors of Mercantile by Republic with the knowledge and intent that such financial statements would be included in the Mercantile Proxy Statement.

222. Republic knew, or in the exercise of reasonable diligence should have known, that the financial statements at the time and in the light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements contained in such financial statements not false or misleading.

223. The financial statements omitted to disclose the nature and scope of Republic's investments in Realty. In addition the financial statements omitted to disclose Realty's financial distress which Republic and the Defendant Republic Directors knew would, in all likelihood, result in substantial losses to Republic by virtue of Republic's substantial investment in Realty securities and in mortgages on properties owned or controlled by Realty.

224. The financial statements overstated net income of Republic, and did not contain adequate reserves for losses in connection with the investments in Realty and other investments, so that Republic's assets were also overstated.

225. The financial statements omitted to disclose that such statements were unaudited and that Andersen had been terminated as Republic's auditors because they refused to certify said financial statements.

226. Shareholders approval for the proposed merger of Mercantile with and into Republic was obtained as a result of the foregoing false and misleading financial statements in the proxy statement. The merger of Mercantile into Republic was consummated following such approval.

227. As hereinabove set forth, Realty, Republic, the Defendant Realty Directors and the Defendant Republic Directors directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon the

Mercantile Class in connection with the purchase and sale of securities of Mercantile and Republic, in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

228. By reason of the foregoing, the Mercantile Class is entitled to rescission of the merger agreement and damages.

COUNT XXVI

The Mercantile Class Claim Against Republic for Breach of Contract

229. The Mercantile Class repeats and realleges each and every allegation contained in paragraphs 220 through 228 as if set forth in full herein.

230. On or about April, 1971, Republic and Mercantile entered into an Agreement and Plan of Merger and Reinsurance (the "Merger Agreement").

231. Pursuant to the Merger Agreement and the shareholder vote which was achieved as a result of the solicitation of proxies as hereinabove described, Mercantile was merged into Republic and ceased its corporate existence on or about April 22, 1971.

232. Article Fifth (g) (2) of the Merger Agreement provided, in pertinent part, that Republic warranted and agreed with Mercantile that the balance sheet of Republic as at December 31, 1970, and the accompanying statement of income for the 12 months then ended, previously furnished by Republic to Mercantile, fairly set forth the condition of Republic at such date and the results of its operations for the 12 month period then ended, in conformity with generally accepted insurance accounting principles

and that said balance sheet reflected all known claims against, and debts and liabilities of Republic, fixed or contingent, as of the date hereof.

233. Republic breached the aforesaid provision of the Merger Agreement in that its balance sheet as at December 31, 1970, and in its accompanying statement of income for the same period misrepresented the condition of the corporation and further did not disclose that during 1970 and 1971, and prior to the execution of the Merger Agreement, there were material adverse changes in the financial condition of Republic.

234. The Mercantile Class is a third party beneficiary under the aforesaid Merger Agreement.

235. By virtue of Mercantile's non-existence under the circumstances hereinabove described, Mercantile's corporate right to sue has devolved upon its shareholders at the time of the merger, such shareholders comprising the Mercantile Class.

236. By virtue of the foregoing, Republic is liable to the Mercantile Class for damages.

COUNT XXVII

THE MERCANTILE CLASS CLAIM AGAINST REALTY, REPUBLIC, THE DEFENDANT REALTY DIRECTORS AND THE DEFENDANT REPUBLIC DIRECTORS FOR COMMON LAW AND STATUTORY FRAUD

237. The Mercantile Class repeats and realleges each and every allegation contained in paragraphs 220 through 228 and 230 through 236 as if set forth in full herein.

238. This Court has pendent jurisdiction of the cause of action alleged in this Count under the common law of

the State of Texas and Section 27.01 of the Texas Business and Commerce Code.

239. As hereinabove set forth, Realty, Republic, the Defendant Realty Directors and the Defendant Republic Directors directly and indirectly, singly and in concert and aiding and abetting each other, made false representations of past or existing material facts to the Mercantile Class for the purpose of inducing the Mercantile Class to approve the Merger Agreement and to enter into the purchase and sale of securities of Republic and Mercantile, which representations were relied upon by the Mercantile Class in approving the Merger Agreement and in connection with said purchase and sale.

240. Realty, Republic, the Defendant Realty Directors and the Defendant Republic Directors directly and indirectly, singly and in concert and aiding and abetting each other, willfully made said false representations and/or knowingly benefited therefrom.

241. By virtue of the foregoing, Realty, Republic, the Defendant Realty Directors and the Defendant Republic Directors are jointly and severally liable to the Mercantile Class for actual damages and for exemplary damages up to an amount twice the amount of actual damages as provided in Section 27.01(c) of the Texas Business and Commerce Code.

COUNT XXX

THE DEBENTURE CLASS CLAIM AGAINST REALTY, REPUBLIC, THE DEFENDANT REALTY DIRECTORS, AND WFB FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 THEREUNDER

242. The Debenture Class repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(d), 5 through 56, 76 through 83 and 106 through 145.

243. At all relevant times subsequent to August 4, 1970 the Debentures were traded in the over-the-counter market and prior thereto on the Amex.

244. By virtue of the foregoing, Realty, Republic, the Defendant Realty Directors and WFB directly and indirectly, singly and in concert and aiding and abetting each other, by use of the means and instrumentalities of interstate commerce and of the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts necessary to make the statements made not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Realty Debenture Class in connection with the purchase and sale of the Debentures in violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder.

245. Such acts were intended to keep from the public and in particular from the Debenture Class the fact that defaults had occurred under the terms of the Indenture Agreement covering the Debentures by falsely stating Realty's income, revenues, sales and assets, and by making false and misleading statements to the public and in failing to give information to the public which caused the public statements to become false and misleading.

246. In furtherance of such scheme, Realty, Republic, the Defendant Realty Directors, issued press releases, financial statements, reports and appraisals to the public and others which materially overstated the income, revenues, sales, assets and earnings of Realty.

247. Such acts prevented the Debenture Class from taking action to protect its interests, all of which caused

substantial sums of Realty to be dissipated and lost so that there are now insufficient assets of Realty to satisfy payment of Realty's obligations to the Debenture Class pursuant to the terms of the Indenture Agreement covering the Debentures, all of which is to the detriment and monetary loss of the Debenture Class.

248. There is no adequate remedy of law.

COUNT XXXI

THE DEBENTURE CLASS CLAIM AGAINST REALTY, REPUBLIC, THE DEFENDANT REALTY DIRECTORS AND WFB FOR VIOLATION OF THE TRUST INDENTURE ACT

249. The Debenture Class repeats and realleges each and every allegation contained in paragraphs 242 through 248 as if set forth in full herein.

250. By reason of the foregoing, Realty, Republic, the Defendant Realty Directors and WFB have violated the Trust Indenture Act, thus causing damages to the Debenture Class.

251. There is no adequate remedy of law.

COUNT XXXII

THE DEBENTURE CLASS CLAIM AGAINST IRVING

252. The Debenture Class repeats and realleges each and every allegation contained in paragraphs 242 through 251 as if set forth in full herein.

253. Irving at all relevant times was and is the duly qualified and acting Successor Indenture Trustee of the Debentures which were registered pursuant to the provi-

sions of the Securities Act, the Act and the Trust Indenture Act and was so acting under the provisions of the Indenture Agreement covering the Debentures and the Trust Indenture Act.

254. Irving has been negligent in the performance of its duties and has acted otherwise improperly under the applicable Indenture Agreement and Trust Indenture Act in that Irving failed to make and delayed in making proper inquiry to ascertain the true facts and in ignoring the knowledge concerning Realty in its possession.

255. In the course of its duties as Indenture Trustee, Irving failed to:

(a) inform the holders of the Debentures of the aforesaid facts, and to issue reports required by it;

(b) declare a default under the Indenture Agreement and to take action to protect the interests of the Debenture holders;

(c) require Realty to file required reports and certificates; and

(d) establish required special accounts.

256. By virtue of the provisions of the Trust Indenture Act and its actions, including, *inter alia,* those actions described herein, Irving acted while disqualified as the Indenture Trustee.

257. By virtue of the foregoing, the Debenture Class has been damaged.

258. There is no adequate remedy of law.

Amended Consolidated Complaint

COUNT XXXIII

THE SYNERCON CLAIM AGAINST REALTY, THE DEFENDANT REALTY DIRECTORS, THE DEFENDANT REPUBLIC DIRECTORS EXCEPT WILLIAMS, PMM, WFB, EVERS AND O'TOOLE FOR VIOLATION OF SECTION 10(b) OF THE ACT AND RULE 10b-5 PROMULGATED THEREUNDER; SECTION 20 (a) OF THE ACT; AND THE COMMON LAW.

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259. Synercon repeats and realleges each and every allegation contained in paragraphs 1 through 3, 4(h), 5 through 56, 63 through 66, 76 through 82 and 85 through 89 as if set forth in full herein.

260. On August 27, 1971, Synercon sold its wholly-owned subsidiary, Forrest Life Insurance Company ("Forrest Life") to Republic for 800,000 shares of common stock of Republic pursuant to the terms and conditions of an Agreement and Plan of Merger, Amalgamation and Reinsurance, dated March 15, 1971 (the "Merger Agreement").

261. The Merger Agreement, among other things, contained the following representations, warranties and conditions:

> "2(b) Its [Republic's] Balance Sheet at December 31, 1970 and the accompanying Statement of Income for the twelve months then ended, copies of which have previously been furnished, fairly set forth the condition of the corporation at such date and the results of its operations for the twelve month period then ended in conformity with generally accepted insurance accounting principles. Said Balance Sheet reflects all known claims against, and debts and liabilities of, the corporation, fixed or contingent, as of the date thereof; and since such date, there has been

> no material adverse change in the assets or liabilities or in the financial condition or business of the corporation. Except as and to the extent reflected or reserved against in its Balance Sheet, it has no knowledge that it had any liabilities or obligations of the nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including any tax liabilities due or to become due . . .
>
> 6(f) Republic shall have furnished Synercon with all information necessary for inclusion in the proxy soliciting material to be sent to the shareholders of Synercon for approval of this Agreement, and none of such information shall be false or misleading in any material respect or shall fail to state a fact necessary to make the statements therein not false or misleading in any material respect."

The Merger Agreement further provided that on the effective date of the merger ("Effective Date"), Republic would deliver an opinion of its General Counsel, the defendant Nash, and its certificate to the effect that the representations and warranties contained in the Merger Agreement were substantially true and correct on and as of the Effective Date. In accordance with those provisions, the defendant Nash, as General Counsel, delivered an opinion letter, dated August 16, 1971, which opines that the representations and warranties of Republic contained in the Merger Agreement, including those relating to Republic's financial statements, were true and correct in all material respects as of that date and that Republic had performed and complied with all agreements and conditions required by the Merger Agreement to be performed

or complied with by it prior to the date of merger, except as set forth in a certain consent and waiver agreement which involved a matter not relevant to the causes of action described herein. In addition to those documents required by the Merger Agreement, Republic, during the period between the first merger discussions in July 1970 through the Effective Date, through the defendants T. Beasley, Nash and others, delivered to Synercon other written and oral information about its operations and financial condition. The merger was effected on August 27, 1971, in strict reliance upon the information and documents furnished to Synercon by Republic and its officers and directors and upon the representations, warranties and conditions included in the Merger Agreement.

262. Relying upon the information and documents presented to it by Republic and its officers and directors relating to Republic's operations and financial conditions, as well as the annual dividend which historically had been paid by Republic and the market price of Republic common stock which reflected that information, the plaintiff Synercon agreed to sell its wholly-owned subsidiary Forrest Life, with the belief that the acquisition of the shares of Republic common stock would provide a sufficient financial base from which to build its insurance agency and brokerage business through acquisitions and internal growth.

263. The financial statements omitted [illegible]se the nature and scope of Republic's investments in Realty. In addition, the financial statements omitted to disclose Realty's financial distress which Republic and the Defendant Republic Directors knew would, in all likelihood, result in substantial losses to Republic by virtue of

Republic's substantial investment in Realty securities and in mortgages on properties owned or controlled by Realty.

264. The substance, nature, extent and materiality of Republic's transactions and courses of business during its fiscal years ended December 31, 1970, 1971 1972 and 1973 with Realty, a company in grave financial difficulty during those years, and Republic's potential material losses in connection therewith, were knowingly not disclosed by Republic or by its officers and directors to Synercon during the discussions and negotiations preceding the Merger Agreement or during the period preceding the Effective Date of the Forrest Life merger or at any time during those years after the merger. In addition, Republic failed to disclose to the plaintiff Synercon during that period the facts surrounding the termination in December 1970 of Andersen's engagement as Republic's auditor and the contents of the letter described in paragraph 38(d) from Andersen to Republic regarding the need for complete and informative disclosure of the Republic-Realty transactions and the likelihood of the material effect of such transactions on Republic's financial reports and other information relating to Republic's operations, and in particular, misstated and misrepresented directly to the plaintiff Synercon the financial condition of its investments and operations, as evidenced in part by the documents referred to in paragraph 261, and misstated generally to all shareholders, including Synercon, the amount of its assets, the amount of its income and the amount of reserves needed to adequately cover possible losses on mortgages and real estate, as set forth in its Annual Reports to its stockholders for the fiscal years 1970, 1971 and 1972, copies of which were received and relied upon by the plaintiff Synercon, before and after it became a Republic stockholder.

265. The Defendant Republic Directors directly and indirectly, singly and in concert, caused, induced, participated in, aided and abetted, acquiesced in, and approved the aforesaid devices, schemes, and artifices to defraud, the misstatements and omissions of material facts, and the fraudulent acts, practices and courses of business described herein in the execution of their respective offices at Republic. Each of the Defendant Republic Directors controls Republic within the meaning of Section 20(a) of the Act. The defendant T. Beasley, as chief executive officer of Republic, is responsible and exercises a supervisory and review function for the conduct of all Republic's affairs, including Republic's investments in Realty. Defendant T. Beasley also actively participated in the negotiation of the significant transactions between Republic and Realty as well as in the discussions and negotiations with the plaintiff Synercon for the sale of Forrest Life to Republic. Defendant Nash, as General Counsel and later as President, had knowledge of and negotiated the terms of many of the Republic-Realty transactions and actively participated in the discussions and negotiations with Synercon for the sale of Forrest Life to Republic, signing the opinion letter and certificate described in paragraph 261 herein. The defendants, T. Beasley, Nash, R. Beasley, Brady, Skelton and Smoot, were members of Republic's Finance Investment Committee which approved virtually every transaction between Realty and Republic.

266. The defendant PMM directly and indirectly, singly and in concert, caused, participated in, aided and abetted, and acquiesced in the devices, schemes and artifices to defraud, and the misstatements and omissions of material facts, and the fraudulent acts, practices and courses of business described herein as more fully described in paragraphs 1 through 56 and 63 through 66 above.

267. The defendants Evers and O'Toole directly and indirectly, singly and in concert, participated in, aided and abetted, and acquiesced in the devices, schemes, and artifices to defraud, and the misstatements and omissions of material facts and the fraudulent acts, practices and courses of business described herein as more fully described in paragraphs 104 through 113 above.

268. Realty and the Defendant Realty Directors directly and indirectly, singly and in concert, participated in, aided and abetted, and acquiesced in the devices, schemes and artifices to defraud, and the misstatements and omissions of material facts, and the fraudulent acts, practices and courses of business described herein by inducing and causing the transactions and courses of business described herein and by conspiring with other defendants to conceal the significant relationships between Realty and Republic.

269. WFB directly and indirectly, singly and in concert, participated in, aided and abetted, and acquiesced in the devices, schemes, and artifices to defraud, and the misstatements and omissions of material facts, and the fraudulent acts, practices and courses of business described herein as more fully described in paragraph 85 through 89 above.

270. Since its acquisition of the Republic common stock, Synercon has been actively seeking and acquiring insurance agencies and brokers located in various parts of the country through the exchange of shares of Synercon common stock. At the time of the public disclosure in early 1974 of the previously undisclosed adverse material information relating to the operations and financial condition of Republic, Synercon had several merger discussions and negotiations underway, at least one of which had proceeded to the state of a publicly announced agreement in principle. As a result

of the adverse material information relating to Republic which was unknown and undisclosed prior to 1974 and which raised questions as to the soundness of Synercon's investment in Republic, and as a result of the decline in the market price of Synercon common stock which followed the disclosure of the information relating to Republic, the acquisition program of Synercon is virtually at a standstill. In addition, under the terms of one previously made merger agreement, Synercon guaranteed a purchase price of $30 per Synercon share in the event that the acquired shareholders should so notify Synercon by April 30, 1974. Said shareholders have so notified Synercon, and therefore, the decline in market price has substantially increased the cost of that acquisition for Synercon.

271. Since its acquisition of the Republic common stock, Synercon, principally through its wholly-owned subsidiary Blair, Follin, Allen & Walker ("BFAW") has written a material amount of life insurance, annuity, and accident and health business for Republic. Since the disclosure of the Republic information, the Synercon business with these customers and with potential customers has been substantially affected. In addition to affecting the general business of Synercon, the adverse information relating to Republic has caused large expenditures of executive and employee time to be diverted from normal business affairs to the Republic matter and has impaired the morale and performance of its executives and employees, many of whom are stockholders of Republic and Synercon.

272. The defendant Republic materially breached the Merger Agreement described in paragraph 261 herein by making false representations and warranties with respect to its financial statements for the fiscal year 1970 and by

failing to comply with the condition set forth therein with respect to the correctness and completeness of the information furnished Synercon in connection with its proxy material.

273. By virtue of the foregoing, Synercon has been damaged.

274. Synercon has no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

1. As to all plaintiffs except Flamm, Ferber, Asarian and Synercon against the defendants:

(a) that this action be declared a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(b) that the defendants be adjudged jointly and severally liable to plaintiffs and other member of the class for compensatory damages and, in addition, punitive damages; and

(c) that plaintiffs be awarded costs and reasonable counsels' and experts' fees.

2. In addition:

(a) as to the Mercantile Class, rescission of the merger of Mercantile into Republic;

(b) as to the Pacific Class, rescission of the merger of Pacific into Republic; and

(c) as to the Debenture Class:

(i) Realty be declared to be in default of the Indenture Agreement (the "Agreement") and that

judgment be entered against it for the full amount of the Debentures outstanding together with other sums due the Debenture Class pursuant to the terms of the Agreement, with interest;

(ii) that a receiver be appointed for Realty;

(iii) that defendant Irving be adjudged liable for compensatory and punitive damages; and

(iv) that defendants be enjoined from further violations of the Trust Indenture Act.

3. As to Synercon against the defendants:

(a) For a complete and full rescission of the merger of Forrest Life into Republic (and an accounting for all assets, property and profits of Forrest Life and an accounting of all business written by Synercon or its subsidiaries, including BFAW, in Republic which but for the merger would have been placed in Forrest Life) on the ground that the merger of said two corporations was obtained by fraud and breach of contract as aforesaid.

(b) In the alternative, if the Court does not decree **rescission of the merger, for compensatory damages** in the amount of $22.5 million suffered by the plaintiff, plus its reasonable attorneys' fees, litigation **expenses, court costs, and prejudgment interest on** the compensatory damages awarded.

(c) For punitive damages in the amount of $5 million.

(d) For general relief.

4. As to Flamm, Ferber and Sussman:

(a) that the defendants be adjudged jointly and severally liable for compensatory damages sustained by Republic and, in addition, punitive damages; and

(b) that costs and reasonable counsels' and experts' fees be awarded; and

(c) that those defendants owning any security issued by Republic be enjoined from disposing, transferring, selling or hypothecating such securities.

5. As to Asarian:

(a) that the defendants be adjudged jointly and severally liable for compensatory damages sustained by Realty and, in addition, punitive damages; and

(b) that costs and reasonable counsels' and experts' fees be awarded.

The foregoing demands to be included with such other and further relief as to this Court shall appear just and equitable.

KASS, GOODKIND, WECHSLER & GERSTEIN

By /s/ STUART D. WECHSLER
A Member of the Firm
Liaison Counsel for Plaintiffs
122 East 42nd Street
New York, New York 10017
(212) 867-8570

Transcript of Hearing, September 12, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civil 1097

SECURITIES & EXCHANGE COMMISSION,

Plaintiffs,

versus

REPUBLIC NATIONAL LIFE INSURANCE COMPANY, REALTY EQUITIES CORPORATION OF NEW YORK, PEAT, MARWICK, MITCHELL & COMPANY, WESTHEIMER, FINE, BERGER & COMPANY, MORRIS KARP, JEROME SOCHER, THEODORE P. BEASLEY, C. J. SKELTON, RONALD REX BEASLEY, NORBERG P. BRADY, THOMAS G. NASH, JR., SAMUEL P. SMART, NEAL N. STANLEY, HILARY H. EVERS AND PHELIM F. O'TOOLE, JR.,

Defendants.

New York, N. Y.
September 12, 1974—10:00 a.m.

Before

HON. MILTON POLLACK,
District Judge.

APPEARANCES:

THEODORE ALTMAN, Esq., and
GARY N. SUNDICK, Esq.,
Attorneys, Securities & Exchange Commission

W. D. MASTERSON, Esq., and
WILLIAM C. GARRETT, Esq.,
Attorneys for various plaintiffs

Transcript of Hearing, September 12, 1974

FRANK G. NEWMAN, Esq.,
Attorney for Joseph L. Massie, a plaintiff

RICHARD J. RUBIN, Esq.,
Attorney for Plaintiff Asarian in 74 Civil 1942

EDWARD LABATON, Esq.,
Attorney for Plaintiff Rubinstein in 74 Civil 1255

IRA J. SANDS, Esq.,
Attorney for Plaintiff Katz

SHEARMAN & STERLING, Esqs.,
Attorneys for Defendants Alexander Grant and
Klein, Hinds & Finke
Richard P. Lasko, Esq., of Counsel

CAHILL, GORDON, SONNETT, REINDEL & OHL, Esqs.,
Attorneys for Peat, Marwick & Mitchell
Michael P. Tierney, Esq., of Counsel

WINTHROP, STIMPSON, PUTNAM & ROBERTS, Esqs.,
Attorneys for Defendant Irving Trust Co.
in 74 Civil 1192
Theodore M. Weitz, Esq., and
Stephen A. Weiner, Esq., of Counsel

SIMPSON, THACHER & BARTLETT, Esq.,
Attorneys for James F. Coonan in *Ferber*
Kenneth R. Logan, Esq., of Counsel

TENZER, GREENBLATT, FALLON & KAPLAN, Esq.,
Attorneys for Defendant Hilary H. Evers
Richard Kaye, Esq., of Counsel

PRINS, FLAMM & SUSMAN, Ltd.,
Representing Plaintiff Flamm
Arthur Susman, Esq., and
Richard H. Prins, Esq., of Counsel

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MILBANK, TWEED, HADLEY & MCCLOY, Esqs.,
Attorneys for various defendants
Roger Boyle, Esq., of Counsel

NICKERSON, KRAMER, LOWENSTEIN, NESSEN,
KAMIN & SOLL, Esqs.,
Attorneys for Security National Bank (sued as
Royal National Bank)
Robert M. Heller, Esq., of Counsel

BAKER & POTTS, Esqs.,
Attorneys for Republic National Life
Insurance Company
William C. Harvin, Esq.,
and John Held, Esq., of Counsel

KASS, GOODKIND, WECHSLER & GERSTEIN, Esqs.,
Liaison counsel for plaintiffs
Stuart D. Wechsler, Esq.,
Samuel K. Rosen, Esq., and
Robert Schachter, Esq., of Counsel

WOLF, POPPER, ROSS, WOLF & JONES, Esqs.,
Of Counsel to Sheldon Barr, lead counsel for
debenture holders
Lester L. Levy, Esq., of Counsel

ARNOLD & PORTER, Esqs.,
Attorneys for Westheimer, Fine, Berger & Co.,
Werner Kronstein, Esq., of Counsel

BOOTH & BARON, Esqs.,
Attorneys for Standard & Poor Corporation
George C. Baron, Esq.

The Clerk: Securities & Exchange Commission versus Republic National Life Insurance Company et al.

Are counsel ready?

The Court: I have read your brief, Mr. Sims. How are you going to be able to operate in the dark when you are located in Nashville? Do you want to displace the man that we have selected as the liaison counsel? But you are at such a great distance, and you don't have an office here in New York, so that it seems to me that you are just flapping your wings, aren't you?

Mr. Sims: If your Honor please, yesterday afternoon I met Mr. Wechsler in the Garrett case, and we reviewed our respective positions in the litigation, and first, if your Honor please, I want to assure you that my effort in this regard is not to bombard the defendants with separate discovery and not to in any way circumvent the order that your Honor put out for discovery purposes, but in this meeting yesterday we worked out an arrangement for the handling of the lead counsel duties in regard to what we call the merger cases as distinguished from the open market cases.

Your Honor will recall that there are three merger cases.

The Court: I am very familiar with it. You don't have to go back. Just keep going forward.

Mr. Sims: All right. The agreement, subject to your Honor's approval and with strong assurances to all the defendants that we will not use our position to separately bombard them with discovery requests, is that in the Synacon case our firm would be designated as lead counsel. In the Garrett class action, Mr. Masterson for the Kilgore & Kilgore firm in Dallas will be designated as lead counsel, and in the Rubinstein cases, Mr. Labaton will be designated as lead counsel, so that Mr. Wechsler's position will be lead counsel for the open market cases, and we will be lead counsel in the three individual suits, each one of which will have its lead counsel.

We have discussed with Mr. Wechsler and ourselves the mechanics of how we can work this without problems to the defendants and to each other regarding expenses and that type of thing, and we would submit that to your Honor for approval and will be glad to prepare an order in that regard.

The Court: Well, what you are telling me is that you are going to have a bunch of leaders. Who are going to be the followers?

Mr. Sims: Well, in the merger cases, each is so distinct—

The Court: Each distinct from the others?

Mr. Sims: Yes, sir. Each has its own matters of proof, its own problems. Some of that is common, but there are distinctions in these cases.

The Court: I don't understand that at all. It seems to me that the same nucleus of operative fact applies to each of the three merger cases.

Mr. Sims: Well, much of it is common, but there are distinctions. If your Honor please, there are common matters of proof between our cases and the open market cases.

The Court: That is the reason why the Multi-District Panel thought that we ought to have one coordinated, consolidated operation instead of fractionating it all over the country.

I don't understand how you or Mr. Kilgore or anybody else in Texas and Tennessee can operate in pre-trial proceedings in New York.

Mr. Sims: Well, if your Honor please, it requires without question that we would have associate New York counsel.

The Court: Well, what advantage has been served? If you have to have associate New York counsel, I have given you one. If this is a competition for fees, please be assured

that I am not parceling out the captaincies here in order to set up fees for anybody.

Mr. Sims: That is not part of my quest in this case at this point. No, sir, we think that the consideration in our case, the fact that we are not a class action, the fact that we are not a derivative action in the case, the fact that our case arises from what we charge is face-to-face fraud and breach of contract, the fact that our evidence in that regard is different, is not part of any of the other cases, makes our case that much different.

The Court: I don't think that there is any difference at all, frankly. It seems to me that the same nucleus of operative fact is going to apply, with some trimmings here and there. Somebody is going to produce a contract and say, "I have a warranty." Somebody else is going to say, "In addition to what is being charged here generally as the failure to disclose, there were affirmative misstatements."

All of that seems to me to be subject matter that can be covered in one set of inquiries.

The whole purpose of the multi-district district system is to get away from all these competitive efforts that you speak of when there is one basic fault involved. It is either fraud affirmatively or failure to make statements and the consequences of all of that. The consequences may have to be tried out separately, in separate trials, when you go back to your respective jurisdictions, if that is the way the cases are going to be handled, but the whole purpose of the multi-district procedure is to have a coordinated pre-trial preparation of the cases, and I don't see how your clients are advantaged by pulling away and talking to the defendants separately.

Now, the arrangement is to try and funnel it through one set of hands so as to keep it clear. There is no objec-

tion on the part of any associate counsel to take up with those who are the leaders or the liaison counsel particular aspects that they want to go into. That is like a junior making suggestions to the senior as to what question is to be asked. And there is no great premium on who asks the question in pre-trial. I mean, you are not before the jury then, and the dramatic pose of any particular lawyer doesn't make the slightest bit of difference to the stenographer who is taking it down. It is not a public forum.

So it seems to me that the only sensible way to conduct this case is to funnel it into one area, and if you have suggestions, to present them to the people who are representing those interests for inclusion in the matters to be covered.

When a conflict develops or an inconsistency in the representation develops so that there is prejudice to a particular side, that can be called to my attention in very short order by a telephone call, and you will get a telephone answer or you will get a face-to-face answer at once. So that there won't be any delay in your rights.

In the event that you feel that there are particular documents that are required, you must present your schedule in a letter form to the liaison counsel, who will then see that it gets funneled out to the proper parties.

You will make your own examinations. You will be given notice of everything. You will have a full opportunity to examine the papers as they come in, and you won't have to hire other counsel in New York—unless you want to. That is your prerogative.

There won't be any way in which you can get ahead of the pack unless you have a decisive position which warrants an immediate summary judgment.

Some plaintiffs—Mr. Kilgore's clients, I guess it is—who think that they are entitled to be off and running with

summary judgment—we will hear that on Friday. But until that kind of a situation shows up, in order to keep order here and to keep this thing on a sound level, I think it is better to have the coordinated proceeding that the Multi-District Panel decided ought to be the way to conduct the pre-trial proceedings.

Now, let me tell you a little bit about the procedure on discovery.

All discovery up to the present time has been stayed until further order from me. The way discovery will proceed for everybody is that everybody will put his papers on the table first. That goes for plaintiffs, such as the Synacon plaintiffs, and the defendants. There will be documentary discovery, not by requests that require a Philadelphia lawyer to decipher or a series of definitions appended to the requests so that every word in the request has to be defined every time you take a step, but through simple, straightforward English and requests that are understandable to the other side.

If you have any requests for documents, you will submit them, and they will be transmitted by the liaison counsel. The documents will be produced. There will be a common document depository that will be available to everybody, so that everybody will see the Synacon documents as well as the other documents that come in.

When the documentary disclosure on both sides has been completed, like in about thirty days and not on a stretch-out, then we will take up the question as to what depositions shall be held, where and of whom, and we will set schedules on that, because we are not going to have coercive proceedings, and we are not going to have obstructions in these proceedings, and we are going to conduct the depositions, have the depositions conducted in the most convenient forum for those depositions, and if that most convenient

forum happens to be in a particular situation Tennessee or Texas, that is where they will be held.

But in order to be able to keep control of this thing, it seems to me that we will take each step at a time so that nobody starts flying off the handle and throwing notices at anybody else. Notices will be given in letter form to each other, and each notice given will have to be a simple, concise statement, in elementary English, understandable to anybody, in the lowest common denominator.

After that, in the event that good cause can be shown, we will get to that abomination of all proceedings, interrogatories, which are just a device to harass the other side and put the lawyer to a lot of work to produce papers that are never used on trials. But there may be some things that have to be covered by interrogatories. I won't foreclose that possibility.

I have yet, in forty-five years at the bar, to see a good interrogatory with a worthwile answer, that is actually used on the trial. But the day may come.

Now, does that explain the position?

Mr. Sims: Yes, sir. I think so.

The Court: If this seems to run at odds with what you fellows hatched up yesterday I am sorry, but since we have developed captains and generals, I think that since I am going to be the Secretary of War here, I've got overriding power, and I think that it will be a much sounder, more efficient way of collating the information so as to get to an earlier trial.

I mean to try the cases at an early date, that is, unless other dispositions are made, and they will be tried at an early date if they are efficiently prepared, and they can't be efficiently prepared if everybody is going to horn in on the leadership of the case.

Did you want to say something? I don't want to cut you off. Are you through, Mr. Sims?

Mr. Sims: Yes; I think I am.

The Court: I didn't know whether you were through.

Mr. Susman: Your Honor, my name is Arthur Susman, an attorney from Chicago, and we represent the plaintiffs in one of the Flamm cases.

The Court: Do you have the document number? It is useful to identify yourself and your case.

Mr. Susman: CA-3-74-357-C.

Your Honor mentioned in addressing Mr. Sims that if a conflict occurred—I believe you were referring to a conflict in what documents should be produced on discovery.

I want to just give a very short presentation. I believe the conflict has occurred and probably will pervade the entire litigation, just by the very nature of this litigation.

As your Honor may know, the Flamm litigation was fairly well advanced. We have a great number of documents that have already been produced on the matter at issue.

The inherent conflict I am referring to is the conflict between the derivative and class actions, and I am only interested in the Republic side of the case. This conflict is inherent because of course the class action parties want recovery from Republic among others, and Republic is a fairly solvent defendant, and also because the derivative people want recovery for Republic, and there has just got to be a conflict. One man can't assert both of those causes of action. He's got Republic on both sides of the case.

I think this conflict has demonstrated—and I just use it as a demonstration to show that it is really almost humanly impossible for one attorney to wear both of these hats, and I refer your Honor to the consolidated complaint that

apparently was just filed. I received a copy of it on Friday. I noted some glaring defects. I sent a letter to counsel, Mr. Wechsler, and asked that it not be filed until we talk. However, he apparently wanted to file it prior to this hearing, and I understand that.

I don't fault Mr. Wechsler for the consolidated complaint, but I want to point out to your Honor that if you extract the Republic derivative counts, that is, Count 9, you will find that there is no derivative prayer. You will find that there has been no compliance with Rule 21.1; for example, there is no verification; there is no anti-collusion paragraph; there is no stockholder demand paragraph or futility demand on the part of the stockholders.

Certain of the derivative claims have been dropped. Why, I don't know. Certain of the derivative defendants have been dropped. Why, I don't know.

I point this out to show that I believe there really should be another counsel involved, one whose loyalty is only to the derivative side of this case. I think it is usual procedure, at least in every multi-district litigation case I have been in, in every large stockholders case, that this division is made.

I realize some judges take the position that, well, until a conflict develops one fellow can wear both of these hats. I think the time for that is right in the beginning of the consolidated complaint.

The Court: Are you aware that during the pre-trial proceedings and discovery we are not presenting issues for trial?

Mr. Susman: Yes, sir; I am.

The Court: Do you think there is a conflict as to what the evidence that should be adduced should be?

Mr. Susman: Yes; I do.

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The Court: How can there possibly be if you submit suggestions for documentary disclosure which are then transmitted and those documents are produced? How can there possibly be any conflicts on documentary disclosure or deposition procedure?

Mr. Susman: For example, I don't know what documents Mr. Wechsler is going to request.

The Court: Do you know what documents you are going to request?

Mr. Susman: No. The case is not that advanced.

The Court: You say you are at issue and you are advanced and you know all about your own case. Do you know what you want?

Mr. Susman: I think I do.

The Court: All right. Give him a letter and tell him, "This is what I want." He will add it to his requests. How can there be a conflict about that?

You know, these semantic conflicts don't impress me.

Mr. Susman: I understand.

The Court: I would like to know in detail what the conflict is. I have tried cases that had derivative and class allegations and tried them at the same time.

Mr. Susman: The only conflict I can point to at this time is in connection with the only document that I know of in this case, and that is the consolidated complaint. That is the conflict so far. I can tell you no more at this point.

The Court: The fact that some procedural rules haven't been followed doesn't show there is a substantive conflict.

Mr. Susman: Well, it is certainly apparent that there is no boilerplate demand. Certainly he can't show the futility of the stockholder demand.

The Court: Well, you can write him a letter and call it to his attention.

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Mr. Susman: Well, I asked that the complaint not be filed, and it was filed.

The Court: This is a draft, and it isn't even a penultimate draft. It is to coordinate all the claims, and there can be one filed tomorrow and one after that, the day after tomorrow.

The whole purpose of this complaint is to get organized for the discovery and pre-trial phase. The order that I entered specifically recites that the pleadings in each constituent action stand, and when you go back to trial, the constituent actions will determine what will be tried and how, unless when we get to the trial it is agreed that a consolidation of the constituent complaints can be made.

But for present purposes you have got to start somewhere, and the amended consolidated complaint is intended to wrap up all the claims so that we can get on with the business of discovery.

Mr. Susman: Well, I point this document out to show you—

The Court: I will see to it that his compensation is reduced accordingly, but tell him what you would like him to add in, and we will increase your compensation.

Mr. Susman: No, sir. That is not the point.

The Court: The point is that I want to get this case into the discovery phase promptly, and I am not going to allow any criticisms about the procedure of other people. You have forty lawyers in this courtroom, and I think you could have thirty-nine different ideas as to what to do. But that is inherent in the trade.

But in order to get this thing moving, here is an example of what could be utilized to present the substantive matters involved.

It's the old story I always used to see. If your ear was itchy and you wanted to scratch it, you would do it this

way, but there are some fellows who do it the other way. But the ear gets scratched.

Mr. Susman: Your Honor, I have never had the pleasure of practicing before you. I understand that you are very experienced in these matters, and, as such, I don't think I am telling you anything you don't know by saying that somewhere down the li a conflict just must come up. I can't predict—

The Court: Well, some place down the line, but not now.

Mr. Susman: All right, your Honor.

Mr. Young: I am Harry Young, attorney for the plaintiff in 74 Civil 1223.

Speaking to what Mr. Susman raised, I would suggest that it may not be a bad idea to have a liaison counsel in addition to Mr. Weschler in the Republic cases not from New York.

The reason I say that is that—I don't want to belabor the point, but being an outside, non-New York counsel I was not aware that a consolidated complaint had been filed. I had not seen it. No one ever sent me a copy. I was unaware of what the order of consolidation would be until I received a copy, about a week ago.

I never saw the multi-district panel brief that was filed.

The Court: Where have you been?

Mr. Young: In Chicago, unfortunately, and I—

The Court: Do you have a case pending in New York?

Mr. Young: Yes, sir.

The Court: Have you got a New York lawyer?

Mr. Young: Yes, sir.

The Court: Doesn't your New York lawyer tell you any of these things? Who is your New York lawyer?

Mr. Young: Mr. Sands was, and then—

The Court: Well, maybe Mr. Sands ought to be galvanized into a little more activity on your behalf.

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Mr. Young: Well, your Honor, I wonder—Again, my purpose is only to say that these documents are not being circulated in advance. People are not having a chance to see them or review them, and that a possible cure—

The Court: What documents do you refer to?

Mr. Young: The multi-district panel brief, the order of consolidation, the consolidated complaint, none of which I thought were involved—

The Court: Well, there is no excuse for anybody in the case not knowing about the things that you speak of, because all of these were discussed in open court, and if you want to get yourself on the list of parties to receive copies, that is something you should take up with the lead counsel appointed for the kind of a claim that you have asserted from Illinois into New York.

It would make no sense whatever and bog this case down interminably if, number one, we didn't have counsel in conformity with the local rule about that, located in the city, and, secondly, if we didn't have somebody responsible for communicating with the outside people rather than have to deal directly with the outside people, outside of New York.

I am a little amazed that you are raising this point, because litigation of this type is conducted on a level which is quite different from what you have indicated, and I am sure that anything that you want to contribute upstream to the liaison counsel will be gratefully received. And if you find that the lead counsel who is running the area that you would like to be in is falling down on the job, call it to my attention, and we will get another leader. But we won't get two or three or four people, because then we might just as well give up.

We have got to get this case in some shape where somebody is responsible for the ultimate facts to be elicited and

somebody else is responsible on the other side for disclosing them.

I am hopeful that at some stage, although I was not hopeful in my discussion with Mr. Oliensis, that we will get the defendants to have a liaison counsel. It is a little harder there, because the interests are diverse. Each one is fighting against the idea of being involved. That is a little different from fighting for liability.

So I think that the complaint that you voice can't be countenanced, because the procedure that had to be set up by way of consolidation order and the supplemental consolidation order in order to bring in the Texas and Tennessee cases, is a procedure designed to keep this case on an even keel and get it tried early next spring, hopefully.

Mr. Young: I certainly have no—

The Court: This case is not going to be allowed to carry on for three, five or seven years. It is going to be prepared promptly, and all of the interests that have to be considered will be considered promptly and as efficiently as I can control it.

If the case is to be tried in New York, we will hold the case, and we will see to it that we get an early date. If any part of it has to be remanded to other districts, I mean to send it back prepared, and then it is up to other districts to move their calendars.

Mr. Sands: Your Honor, Mr. Young may have forgotten, because of the conflict in the Multi-District Panel, because of the Chicago position and our unified New York position, there came a time when Mr. Young asked me to be relieved from his representation.

In addition to that, Mr. Young has a Republic case. Your Honor has designated me as lead counsel for the Realty Equities cases. The lead counsel for Republic is Mr. Wechsler.

I did not know, until I heard it in court now, that the consolidated complaint had been filed and served. I was amazed. I merely have a first draft of the copy and was not successful in obtaining a conference of counsel on the subject of the complaint.

The Court: You accept that as the first draft of the complaint, and I will take the penultimate or final. But you have got to start somewhere, and I commend Mr. Wechsler for getting started.

Mr. Sands: It is a good starting point, certainly.

The Court: Now, has anybody any suggestions that will help us get this train on the track and running? Is there anybody who has had difficulty in lining up with the people that he is going to operate through?

So far as I recall it, we have one liaison lawyer who also doubles for Republic; one lead counsel who deals with the bond situations that seem to be dissimilar, and one with the Realty Equity situation. I don't know of any other divisions that are useful at this time for the present area, that is, the area of documentary discovery and getting ready for deposition procedure.

Now, there is one further problem, and that is the degree to which the plaintiff Securities & Exchange Commission and its area of interest will dovetail into the private litigation. The Multi-District Panel sent the whole ball of wax to me for the purpose of efficiency and economy in expediting things, but there are some sharp differences between the Government suit and the private suits in concept, although again I think they radiate around the same nucleus of operative facts, and until it appears that the coordination between the Government and the private suits is essential in the interests of fairness to the defendants, I am not going to coordinate or direct that the procedures

of the Government must funnel through the private liaison or lead counsel, or the other way around, either, that the procedures of the private lawyers have to be funneled through the SEC.

Now, that doesn't mean that there will be duplication that the defendants will be put to. I am going to try and keep that part of it from that.

The SEC did say to the Multi-District Panel that for its purposes it does not require further discovery. They have bethought themselves differently in recent times, but I don't think that the nature of the discovery that they are interested in conducting will trample on the basics of the private cases.

So we will let the two types of cases, the Government on the one side and the private litigation on the other side, go side by side at the moment rather than in unison. That means, of course, and necessarily so, that discovery in one set of cases as opposed to the other case will be available, mutually available, so that there won't be duplication on that aspect of it.

I think that the consolidated amended complaint ought now to be revised, supplemented and brought up to the expectations of all who believe that some interest expressed in their individual complaint has not been fully disclosed or treated in the consolidated amended complaint. I will expect that that can be done within the next thirty days.

Immediately after a revised proof as supplemented and submitted to the plaintiffs is filed, I will release the parties to begin to conduct the first steps in discovery, and that first step will be documentary disclosure on all sides, to be located in a document file.

If it becomes useful because of the distant litigants to have duplicate files in Texas, duplicating those to be had

in New York, I wish you would work that out among yourselves. You don't have to come running to me for every little question that has to be resolved. You are all lawyers, and you ought to be able to do a great many things without reference to the Court.

I will always be available on short notice for oral presentation and oral determinations, so that you won't have the burden of preparing legal papers—always with the caveat that if anybody is disenchanted with the results he is at liberty—and I now for then grant it—to have reargument of any decision I make, which can be presented in written papers, so that I can second-guess my determination, and you will have a permanent record for the Courts of Appeals interested, if there is any abuse of discretion that you might wish to bring up.

But barring that, I think that you will find that the case will proceed far more expeditiously on an oral level and far more inexpensively, if you will proceed on the basis that you will communicate to your adversary, and do it by telephone.

At the end of the thirty days, as I say, documentary disclosure should commence, so that everybody ought now to be preparing his lists of what is wanted, and, as I say, those requests have to be informative and not mere dragnets, which are not informative. Avoid all this definitional stuff that appears very frequently in anti-trust cases, because it won't be tolerated.

In the event that the ultimate requests for documentary disclosure on each side are somehow and in some respects objected to, raise those objections by communicating with my secretary through your respective leaders and liaison counsel, and for prompt conference I will reach the matter, and I hope it will be promptly decided so that you can go on your way.

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Mr. Kaye: I am Richard Kaye, of Tenzer, Greenblatt, Fallon & Kaplan, representing Hilary H. Evers.

Your Honor, in view of the fact that we know today that there will be an amended complaint in the near future, is it possible for the defendants to defer their answers until the amended complaint is served and filed?

The Court: I have already, at a prior time, indicated that no answers will be required until an amended complaint and amended consolidated complaint are filed, that the time for answer is extended until that amended, consolidated complaint has been filed, and then you will have, instead of the usual time of twenty days, thirty days to answer that amended, consolidated complaint after it has been pronounced to be the one that we will go forward with.

Mr. Kaye: That was not clear, your Honor. In fact, I spoke to Mr. Wechsler before the conference, and he thought that the complaint had to be answered now rather than within twenty days. I wanted to clarify it.

The Court: What I wanted to bring out was that I was not changing time for constituent actions out of state. In state here, the local cases, I said the answers need not be served, but I was not in a position until the Multi-District Panel referred to the cases to me, to instruct lawyers in Tennessee and Texas. That was the only thing left open.

But now, whatever their position is in their respective localities, it is frozen, and there need be no responsive pleading until the consolidated, amended pleading is produced and considered to be the one on which we go forward.

Mr. Kaye: Thank you.

Mr. Wechsler: Your Honor, I think there was some implication that the draft of the complaint that was filed was not circulated. That draft was circulated, and all but two counsel commented on it. So I would consider the complaint is virtually in final form.

If Mr. Susman has some valid objections, since I received a letter from him saying that it was defective, without specifying how, I think that could possibly be done by changing one page, and if anyone else has any additional pages, rather than redoing the entire complaint, within the next week, and I think we could deem that a final complaint and get on the move here, because most attorneys have commented.

The Court: Well, I was saying, if you can clear it up in thirty days, all right, but if you can clear it up as filed, we will consider the complaint as filed and amended at the time you file it, and you will send out a notice to everybody through your satellite lawyers and yourself that the complaint is now on file and you are awaiting answers from the defendants in thirty days from the date that that occurs.

Mr. Wechsler: Will you deem it appropriate in the event that only one page or two pages have to be changed to send out the pages?

The Court: Yes. Substitute the copies of the pages involved and send them up to my chambers.

Mr. Wechsler: Thank you, your Honor.

The Court: If you want to, I will permit you to withdraw the paper that is on file, which is not microfilmed, because it is not a Court-signed paper, and if there are supplemental notations to be inserted, you insert them, and then refile, and it will be stamped a second time.

That may save a lot of worrying about whether the amended pages get to the right place.

I will direct now that the Clerk permit you to withdraw that filed paper and then, when you re-file it, just have it stamped as filed a second time.

Mr. Case: I represent three of the directors in two transfer cases, the Synacon and the Dallas Miller cases.

Transcript of Hearing, September 12, 1974

I have filed a pleading in the Dallas case and not in the Synacon case. These three clients have sued in the New York actions also.

When the time for answer comes, may I appear at least for purposes of answering?

The Court: I am sorry. I am not—

Mr. Case: I am not admitted to practice in the Southern District of New York.

The Court: Well, if you are a lawyer in good standing in the community in which you practice, I will be happy to hear you; and that goes for everybody who may be involved in the cases.

Mr. Sims: I have two questions, your Honor:

The cases that were transferred here, the Tennessee case and the Texas case, were in some fair stages of discovery. One of the parties—and I won't name who it is—filed some interrogatories.

The Court: They are stayed.

Mr. Sims: Sir?

The Court: They are stayed.

Mr. Sims: That was question number one. Fine.

The Court: I will make it clear for everybody, once and for all. All discovery procedures undertaken in any of the constituent actions are stayed except as now and henceforth ordered here during the pre-trial proceedings in this court of all the cases.

As I have said, the sequence will be: one, documentary discovery; number two, oral depositions, and, number three, and only for good cause shown, showing the necessity and revelancy therefor, interrogatory procedures.

Mr. Sims: The other question of interest I think particularly to us and to the Garrett plaintiffs, is this:

In our cases there are no class action questions pending. I assume from the schedule that your Honor has set down

that the resolution of the class action questions will not delay the discovery process.

The Court: That is right. That can go along as a separate matter.

Mr. Sims: I see.

The Court: I think that the rules provide sixty days for the filing of the class action status. If it is not in there, I will so fix it.

Mr. Susman: Judge, I take it from what you have just said that we from Texas and Illinois do not have to employ local counsel.

The Court: That is right.

Mr. Susman: Secondly, I don't quite know what form this should take, but may I ask your Honor to inquire of lead counsel that before any settlement discussions are embarked upon, that some—

The Court: Is anybody rushing up with any money?

Mr. Susman: Right—that I want to get it in early, that some notice be given to counsel, whether these settlement discussions are formal or informal. I envision a sharp conflict of interest at that point.

The Court: Well, I haven't heard anybody rushing around to dispose of this case other than by litigation. But if and when such an event commences, everybody will be given notice that the event has commenced.

Mr. Susman: Well, settlement, you know, usually starts out—usually it doesn't spring full blown. It starts out slowly and gradually becomes solidified. I just don't want—

The Court: You are afraid they'll settle the case?

Mr. Susman: I only want to settle the derivative aspects. That is the only thing I am interested in. But I don't want to come in and find out about it when the positions have been solidified and the allocations have already been made.

Mr. Wechsler: Your Honor, that is provided for in the order, in, I believe, 5(f).

The Court: We will go by 5(f).

Mr. Young: Your Honor, excuse me. Harry Young again. Mr. Sands' feeling that he has a conflict raises the problem of local counsel for me, too, even though I was originally in the New York case.

The Court: You have a Republic case?

Mr. Young: Yes, sir.

The Court: You address your remarks to Mr. Wechsler here. That is your leader, not Mr. Sands. Mr. Sands is Realty Equities.

Mr. Young: No, sir. He was my local counsel when the case was filed.

The Court: Well, he gave you up. He gave you up.

Mr. Young: My only question is, must I continue to employ local counsel, or does the same thing apply to me?

The Court: That is your option. I am not requiring anybody to go to unnecessary expense unless and until a separate position has to be staked out because of some disqualifying circumstances.

The leader of your group is Mr. Wechsler, who is serving by appointment of the Court and need not be paid for by you.

Mr. Young: Thank you.

The Court: Does anybody else have any questions? Are there any defendants who want to settle?

Mr. Weitz: I am Theodore Weitz of Winthrop, Stimson, Putnam & Roberts, counsel for defendant Irving Trust Co., in Cohen, 74 Civil 1192.

You mentioned sixty days after the amended complaint the class issue will be resolved.

The Court: I don't think I said "resolved". Isn't there a provision in the order which says that there is a time

within which the rule should be complied with? There is something in the order.

Mr. Sands: We had discussed sixty days for the filing of the papers after the consolidated complaint.

The Court: There is something specific in the prior proceedings on the subject.

Mr. Kaye: At the first meeting, your Honor, I think you referred to it.

The Court: Then it must be in the transcript.

Mr Kaye: The very first meeting.

Mr. Labaton: Paragraph 13, your Honor.

The Court: Of what? The order of consolidation?

Mr. Labaton: Of the order of consolidation.

The Court: All right. Paragraph 13 of the order of consolidation of June 24, 1974, reads as follows:

> "Lead counsel shall move within sixty days after service of the consolidated complaint provided for herein for class action determination under Federal Rules of Civil Procedure, Rule 23."

Mr. Weitz: My question again relates to defendants having discovery of the plaintiffs in class actions prior to the determination of that. I believe you indicated that you would allow that.

I am not sure exactly what procedures will be able to be followed by the defendant in order to get such discovery.

The Court: Discovery of the plaintiffs?

Mr. Weitz: Relating to their capacity to represent the class.

The Court: We will take that up when we come to it. That sounds to me like a procedure that is not devised to carry the case forward.

Mr. Susman: Your Honor, I don't want to make a pest of myself, but I fel very strongly that some sort of error is creeping into this proceeding.

5(f) of the order of consolidation provides that the lead counsel is enter into settlement negotiations by and with the presence and cooperation of lead counsl.

Now, your Honor, Mr. Wechsler obviously interprets that to mean what it apparently says—

The Court: Let me salve your conscience on this subject.

Mr. Wechsler, Mr. Sands and Mr. Barr: In the event that it becomes propitious or somebody begins the discussion of settlement negotiations, you are hereby directed to send through liaison counsel a notice out to every lawyer in the case that such an event has occurred, and from there on we will take it up as required.

Mr. Susman: Thank you, Judge.

The Court: You know, we can get bogged down in a lot of detail that becomes entirely academic.

Is there anybody else who wishes to be heard? Is there anything else that anybody can think of that he wants covered?

Yes, Mr. Sands?

Mr. Sands: Your Honor, with respect to the side-by-side discovery with the Commission, I had suggested to Mr. Wechsler in writing that we attempt to obtain the benefits of the Commission's new discovery so as not to have to duplicate it?

Evidently Mr. Wechsler was unsuccessful, he tells me. He spoke to Mr. Altman and to Mr. Sundick, and their position has been so far that they cannot and will not release any discovery which they have taken at this juncture.

The Court: They are quite right, under the ruling that I have just made. I want the consolidated, amended com-

plaint in first, and then there will be documentary discovery. So to that extent, they are living within the rules.

Mr. Sands: May I ask your Honor's view: when the consolidated complaint is served, which we anticipate will be very shortly, in order not to harass the defendants into giving us duplicate documents that they have already given to the Commission, would your Honor permit us to require the Commission to make their files of documents available; otherwise, we will be asking the defendants to give us the same material.

The Court: No; I won't do that, but I will say that anything that they have made available to any of the defendants in the case may be duplicated and made available to the pool of private litigants, unless there is any privilege question involved. Is there, Mr. Sundick?

Mr. Sundick: No, your Honor.

The Court: I don't think that there is any privilege question in anything that you may have obtained or given—

Mr. Sundick: I would like to think about it.

The Court: All right. Subject to any problem of privilege.

What Mr. Sands is really saying is that he is relying on your expertise to get a lot of things that he might not think of. That is what he is saying.

If there are any documentary matters that have become the subject of open disclosure in the SEC case, then, as a general rule, it will become available, because they are public documents.

That does not refer to your investigation, private investigations, or anything else which has not become the subject of disclosure in the SEC case.

I can think of one document, possibly, that I might consider inappropriate under this rule, and possibly we are

thinking of the same document. But we will deal with that at another time, if and when the disclosure problem arises.

Mr. Sundick: I would hope, your Honor, that to the extent that our documents have been produced to parties, the private parties could obtain them from those parties rather than the Commission directly, if that is possible.

The Court: I think that that would probably be the most efficient way of doing it, because the documents that have been produced to the private parties have been produced to lawyers here in New York, and it is easier to get them out of New York than it is to get them out of Washington.

So for that reason alone I am sure that the defendants who have received disclosure will be glad to furnish the private litigants at copy rates what they have received.

If you have any difficulty, call it to my attention.

Mr. Sands: The question will have to be a little more general than we would like to phrase our demands, because we don't know the identity of the documents supplied, but based on what your Honor says, we will frame a general question and obtain it in that simple way.

Mr. Labaton: Your Honor, in connection with this discussion concerning the availability of documents which had been produced in the SEC proceeding and possibly getting from the defendants in that proceeding transcripts of their testimony, not from the SEC but from them, I was wondering whether your Honor contemplates in the framework outlining the discoveries the possibility of notices to admit, which might very well cut short the—

The Court: That is just a device to make the other fellow work, besides which you get into semantic evasion and avoidance and controversy.

Do it simply. First get the document, then ask questions to explain the document, and then see whether you need anything else.

You know, there are all sorts of things for lazy lawyers to do. I used to be a lazy lawyer, myself. I used to put it on the other fellow, give me everything on this subject and search your files and find me something that will help win my case.

That won't do. You will have to be more specific.

Mr. Tierney: I just want to point out with respect to the requests to be directed to the defendants with respect to documents that we had received from the SEC that, of course, in our case, at least, I can tell you that a good number of the documents which we saw we did not reproduce, so it would be limited to whatever we have copies of.

The Court: Well, don't reproduce anything that you are not paid to reproduce.

I presume that you have an exhibit file somewhere, and I think that it would be useful to avoid being beset by lawyers in the private litigations to have those documents in your library somewhere where they could come and look at them and point out what they want copies of. You don't have to go out and search for what you think they might need. You have your documents in a particular case, but those who want to, that is, the liaison counsel and lead counsel, come in, see what they want copied, pay you for the copies and you give it to them.

Mr. Tierney: My only point, your Honor, is that it would not represent the complete file of documents that the SEC had made available for us to review, and I didn't want anybody to be misled by that.

The Court: When you say "available", you mean you have seen a lot of things that you didn't take copies of?

Mr. Tierney: That's correct.

The Court: Well, you can't give them a copy of anything that you haven't got a copy of.

Transcript of Hearing, September 12, 1974

The Court: Now, I think we have probably concluded on the private litigations, but I think there are some things—Now, you are up here, Mr. Altman and Mr. Sundick, and I want to talk to you. Is Mr. Hegarty in court?

Mr. Tierney: Your Honor, he is not in New York today. He will be available tomorrow.

The Court: I think that there are some outstanding matters between your firm and the Commission's attorneys. I will take those up in the robing room. We don't need to detain the rest of these lawyers.

If there is nothing further, the meeting is adjourned.

Stipulation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1137 M.P.

GEORGE KATZ,

Plaintiff,

against

REALTY EQUITIES CORPORATION OF NEW YORK et al.,

Defendants.

74 Civ. 1248 M.P.

KENNETH I. HERMAN, Trustee F/B/O SHERIL ESTA KUPFER,

Plaintiff,

against

REPUBLIC NATIONAL LIFE INSURANCE COMPANY et al.,

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between liaison counsel for plaintiffs and counsel for defendants Alexander Grant & Company ("Grant") and Klein, Hinds & Finke ("KHF") that the Order of the Judicial Panel on Multidistrict Litigation filed August 22, 1974 (M.D.L. Docket No. 174) and the Order of Consolidation by the Honorable Milton Pollack filed August 26, 1974, copies of which are annexed hereto, are documents related to these cases, and necessary to the adjudication of the appeal

herein which has been taken by defendants Grant and KHF and are deemed to be part of the record on appeal in this case.

Dated: New York, New York
November 27, 1974

KASS, GOODKIND, WECHSLER & GERSTEIN

By /s/ MICHAEL P. FUCHS
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Opinion and Order of J.P.M.L.

BEFORE THE

JUDICIAL PANEL

ON MULTIDISTRICT LITIGATION

IN RE REPUBLIC NATIONAL—REALTY EQUITIES SECURITIES LITIGATION

DOCKET NO. 174

BEFORE ALFRED P. MURRAH*, CHAIRMAN, AND JOHN MINOR WISDOM, EDWARD WEINFELD, EDWIN A. ROBSON, WILLIAM H. BECKER*, JOSEPH S. LORD, III, AND STANLEY A. WEIGEL, JUDGES OF THE PANEL

PER CURIAM

I. *Background of Litigation*

In March of 1974 the Securities and Exchange Commission filed an enforcement action in the Southern District of New York against Republic National Life Insurance Company, seven of its officials, and its auditor, Peat, Marwick, Mitchell & Co.; Realty Equities Corporation of New York, two of its officials, and its auditor, Westheimer, Fine, Berger & Co., and two other individuals. The SEC alleges that defendants violated the federal securities laws by participating in a massive scheme to defraud the investing public by concealing the fact that Realty, in which Republic had a huge investment, was in dire financial condition. It is further alleged that, as a result of this scheme, Republic

* Judges Murrah and Becker were unable to attend the hearing and, therefore, took no part in the consideration or decision of this matter.

was able to perpetuate the materially false appearance that its holdings in Realty were valuable assets and was also able to report as income millions of dollars in funds that Republic had pumped into Realty or Realty-controlled companies for the specific purpose of enabling Realty, in turn, to pay interest on the debts it owed Republic.

Defendants Realty and two of its officers have recently entered into a consent decree with the SEC. Realty neither admitted nor denied the allegations in the complaint and agreed to take certain measures to avoid future securities laws violations. The action is still pending against the remaining defendants.

In addition to the *SEC* action, seventeen private actions concerning the Republic-Realty financial relationship have been filed in three different districts: twelve in the Southern District of New York, four in the Northern District of Texas and one in the Middle District of Tennessee. Taken as a whole, they involve the same as well as additional defendants. Plaintiffs in many of the actions purport to represent similar classes of Republic or Realty securities holders.

As a result of a motion by Peat, Marwick, Mitchell & Co., a motion by Republic and a show cause order issued by the Panel, all actions, including the *SEC* action, are now before the Panel for consideration pursuant to 28 U.S.C. § 1407.[1] Except for the SEC, plaintiffs in the *Synercon* and *Garrett* actions and defendants Standard & Poor's Corporation and A. M. Best Company, all parties favor transfer to a single district for coordinated or consolidated

[1] Republic's motion before the Panel is to transfer all actions to the Northern District of Texas for pretrial and trial proceedings. The Panel's authority pursuant to 28 U.S.C. § 1407, however, is limited to transferring actions for coordinated or consolidated pretrial proceedings only.

pretrial proceedings. The parties disagree, however, on whether the Southern District of New York or the Northern District of Texas is the most appropriate transferee forum. We find that these actions involve common questions of fact and that transfer of all actions under Section 1407 to the Southern District of New York will best serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

II. *The Question of Transfer*

Most of the parties recognize the need for transfer of all actions to a single district under Section 1407 in order to avoid duplication of common discovery concerning numerous complex questions of fact underlying the Republic-Realty financial relationship. Furthermore, transfer will eliminate the possibility of conflicting Rule 23 class determinations and other pretrial rulings. The following parties, however, have objected to any transfer:

A. *Plaintiffs in the Synercon and Garrett actions*

Synercon Corporation, the sole plaintiff in the action pending in the Middle District of Tennessee, is seeking rescission of the merger between its wholly-owned subsidiary Forrest Life Insurance Company and Republic or, in the alternative, compensatory and punitive damages.

The *Garrett* action is pending in the Northern District of Texas and involves the merger of Mercantile Security Life Insurance Company into Republic. An order has been entered in that action allowing it to proceed as a class action on behalf of all persons who acquired Republic stock by virtue of having been Mercantile stockholders.

Both the *Synercon* and *Garrett* plaintiffs concede that their actions share questions of fact common to all other

actions in this litigation. Nevertheless, they argue that their actions should not be transferred because the discovery on these common issues can be easily obtained from the records of the SEC investigation. They also argue that their actions involve discovery of many factual issues unrelated to the other actions and that that discovery would be delayed by transfer. In addition, plaintiffs in *Garrett* contend that progress in their action would be unfairly delayed pending discovery on the issue of class maintainability in the other actions.

We are not convinced that the records of the SEC investigation will provide the sole source of discovery on the common issues between the *Syncrcon* and *Garrett* actions and the rest of the litigation and, accordingly, we find that inclusion of these actions in the coordinated or consolidated pretrial proceedings will promote the just and efficient conduct and expedite the termination of the entire litigation. Nor do we accept the proposition that progress on the discovery of the asserted non-common issues will be impeded by transfer. The transferee judge has the broad discretion to design a pretrial program which will allow discovery on any unique issues to proceed concurrently with discovery on the common issues. Moreover, the class of plaintiffs previously designated in the *Garrett* action falls within the boundaries of class requests in some of the other actions in this litigation and, therefore, it is necessary to have all class action questions resolved by a single judge in order to eliminate the possibility of conflicting class determinations and achieve the most expeditious method of organizing the class or classes and any necessary subclasses.

B. *SEC*

Although the *SEC* action shares common factual issues with the other actions in this litigation, the SEC maintains that its action is entitled to separate treatment from a public policy viewpoint.[2] Since the *SEC* action is already pending in the transferee district, however, the degree of coordination between that action and the private actions is a matter to be determined by the transferee judge.

C. *Defendants Standard & Poor's and A.M. Best*

Standard and Poor's, a publisher of financial information, and A.M. Best, a publisher of information for the insurance industry, are defendants in only Count VII of the *Herman* action pending in the Southern District of New York. They are not named as defendants in any other action in this litigation and, as a result, they request that, in the event the *Herman* action is transferred, Count VII be separated from the rest of the litigation pursuant to 28 U.S.C. § 1407(a) and remanded to New York for further proceedings. In light of our selection of the Southern District of New York as the appropriate transferee forum for this litigation, the request of defendants is moot. Whether these defendants are entitled to separate treatment is now within the sole discretion of the transferee judge.

III. *The Transferee District*

Certain parties favor the Northern District of Texas as the transferee forum on the ground that Republic is the major corporate defendant in this litigation, that its home office is located in the Northern District of Texas and that, as a result, the key documents and witnesses are located

2. For a discussion of the Panel's views concerning transfer of civil actions brought by the Securities and Exchange Commission, *see In re National Student Marketing Litigation*, 368 F. Supp. 1311 (J.P.M.L. 1973).

there. They also point out that Republic has been placed under the supervision of the Texas Commissioner of Insurance and that coordination between the Commissioner and the transferee court will be necessary and most easily accomplished if the Northern District of Texas is designated as the transferee district.

Although the arguments in favor of the Texas forum have merit, on balance, we are persuaded that the Southern District of New York is the most appropriate transferee forum. Thirteen of the eighteen actions involved in this litigation, including the *SEC* action, are already pending before the Honorable Milton Pollack in the Southern District of New York and are proceeding expeditiously under his supervision. While it is true that Republic's operations in Texas will be a major source of discovery, the allegations of misconduct in these actions indicate that Realty's operations in New York will be an equally important source of discovery. The transferee judge, of course, has considerable flexibility to tailor the pretrial proceedings to avoid unnecessary inconvenience to Republic and its witnesses. *See, e.g., Manual for Complex Litigation*, Part I, Section 2.50 (rev. ed. 1973); *Fed. R. Civ. P.* 45(d)(2). Moreover, we are confident that, if necessary, the transferee judge will be able to coordinate discovery efforts with the Texas Insurance Commissioner to the advantage of all parties concerned.

It Is Therefore Ordered that all actions listed on the attached Schedule A pending in districts other than the Southern District of New York be, and the same hereby are, transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Milton Pollack for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 with the actions already pending in that district and listed on Schedule A.

SCHEDULE A

Docket No. 174

SOUTHERN DISTRICT OF NEW YORK

Securities & Exchange Commission v. Republic National Life Insurance Co., et al.	Civil Action No. 74 Civ. 1097(MP)
Norman Miller v. Republic National Life Insurance Co., et al.	Civil Action No. 74 Civ. 1115(MP)
George Katz v. Realty Equities Corporation of New York et al.	Civil Action No. 74 Civ. 1137(MP)
Sy C. Sussman, et ano. v. Republic National Life Insurance Co., et al.	Civil Action No. 74 Civ. 1225(MP)
Kenneth I. Herman, etc. v. Republic National Life Insurance Co., et al.	Civil Action No. 74 Civ. 1248(MP)
Stanley Ferber v. Theodore P. Beasley, et al.	Civil Action No. 74 Civ. 1294(MP)
Maxwell T. Cohen, et al. v. Realty Equities Corporation of New York, et al.	Civil Action No. 74 Civ. 1192(MP)
Kenneth Rubenstein v. Republic National Life Insurance Co., et al.	Civil Action No. 74 Civ. 1255(MP)
Mildred Freeman & Robert Freeman v. Republic National Life Ins. Co., et al.	Civil Action No. 74 Civ. 1668
Samuel Tisser v. Morris Karp, et al.	Civil Action No. 74 Civ. 1622(MP)
Bernard Chesner v. Morris Karp, et al.	Civil Action No. 74 Civ. 1846
Newton Gottlieb v. Realty Equities Corp. of New York	Civil Action No. 74 Civ. 1875
Harry Asarian v. Morris Karp, et al.	Civil Action No. 74 Civ. 1942

MIDDLE DISTRICT OF TENNESSEE

Synercon Corp. v. Republic National Life Ins. Co., et al.	Civil Action No. 74-189-NA-CV

NORTHERN DISTRICT OF TEXAS

Joesph L. Massie, etc. v. Republic National Life Insurance Co., et al.	Civil Action No. CA3-74-116-D
Norman P. Miller v. Republic National Life Insurance Co., et al.	Civil Action No. CA3-74-207-B
William C. Garrett, etc. v. Republic National Life Insurance Co., et al.	Civil Action No. CA3-74-206-C
Lola Flamm v. Theodore P. Beasley	Civil Action No. CA3-74-357-C

Partial Dissenting Opinion

BEFORE THE

JUDICIAL PANEL

ON MULTIDISTRICT LITIGATION

Docket No. 174

IN RE REPUBLIC NATIONAL-REALTY EQUITIES SECURITIES LITIGATION

BEFORE ALFRED P. MURRAH, CHAIRMAN, AND JOHN MINOR WISDOM, EDWARD WEINFELD, EDWIN A. ROBSON, WILLIAM H. BECKER, JOSEPH S. LORD, III, AND STANLEY A. WEIGEL, JUDGES OF THE PANEL

EDWARD WEINFELD, Judge of the Panel, Dissenting in Part:

I would not coordinate or consolidate the *SEC* action with the other actions for the reasons set forth in my dissent in *In re National Student Marketing Litigation*, 368 F. Supp. 1311, 1319-20 (J.P.M.L. 1973).

Order of Consolidation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN RE

REPUBLIC NATIONAL LIFE INSURANCE COMPANY

and

REALTY EQUITIES CORPORATION OF NEW YORK, *et al*

Docket Nos.

74 Civ. 1115	74 Civ. 1294
74 Civ. 1137	74 Civ. 1622
74 Civ. 1192	74 Civ. 1668
74 Civ. 1225	74 Civ. 1846
74 Civ. 1248	74 Civ. 1875
74 Civ. 1255	74 Civ. 1942
74-189-NA-CV	CA3-74-1116-D
CA3-74-207-B	CA3-74-206-C
CA3-74-357-C	

The Court having consolidated twelve related actions pending in the Southern District of New York pursuant to an Order of June 24, 1974 and the Judicial Panel having transferred five additional related actions from other districts for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 pursuant to an Order filed August 22, 1974,

Order of Consolidation

ORDERED:

1) The pre-trial proceedings in the five actions transferred by the Judicial Panel on Multi-District litigation are hereby consolidated for pre-trial purposes and shall be subject to the procedure set out in the Order of this Court of June 24, 1974 consolidating twelve related actions.

2) Counsel for plaintiffs in such actions shall supply copies of all documents filed in such actions to liaison counsel for plaintiffs.

August 26, 1974

/s/ MILTON POLLACK

U. S. District Judge

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK,

COUNTY OF NEW YORK.

The undersigned being duly sworn deposes and says:

1. I am not a party to the action, am over eighteen years of age and reside at

2. On the 4 day of DECEMBER, 1974, at about 4:30 o'clock P .m., I served a true copy of the annexed Joint Appendix and two true copies of the Brief for Defendants-Appellants Klein, Hinds & Finke and Alexander Grant & Company upon:

Ira Jay Sands, Esq.,
Attorney for Plaintiff Katz

Kass, Goodkind, Wechsler
& Gerstein
Liaison Counsel for Plaintiffs

Kaye, Scholer, Fierman, Hays
& Handler
Attorneys for Defendant
Republic National Life
Insurance Co.

Cahill Gordon & Reindel
Attorneys for Defendant
Peat Marwick Mitchell & Co.

Raymond F. Gregory, Esq.
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Realty Equities Corporation
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Eliot Janeway, A. Sam Gittlin,
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successor by merger to, and sued
herein as, Royal National Bank

Kronish, Lieb, Shainswit, Weiner
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Louis Hubshman, Jr.

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& Williamson
Attorneys for Defendant
First National Realty
& Construction Corp.

Robert Haslett
Defendant

Everett G. Smith
Defendant

Hobart Taylor, Jr.
Defendant

David Stein
Defendant

Harry H. Lipsig, Esq.
Attorney for Plaintiff Herman

Booth & Baron
Attorneys for Defendant
Standard & Poor's Corp.

Donald F. Ayers, Esq.
Attorney for Defendant
A. M. Best Co.

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by depositing true copies of same enclosed in a post-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, located at 20 Exchange Place, New York, New York, directed to said attorneys and defendants as follows:

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being the last addresses designated by the said attorneys and defendants in the preceding papers served by them.

Ralph M. Santelli

Sworn to before me this
4th day of December, 1974.

Gilbert H. Bleich

GILBERT H. BLEICH
Notary Public, State of New York
No. 31-0318850
Qualified in New York County
Commission Expires March 30, 1975